AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

8–9–93
Vol. 58 No. 151

federal register

Monday
August 9, 1993

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

8-9-93
Vol. 58 No. 151
Pages 42187–42482

federal register

Monday
August 9, 1993

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

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche format and magnetic tape. The annual subscription price for the **Federal Register** paper edition is $375, or $415 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $353; and magnetic tape is $37,500. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $4.50 for each issue, or $4.50 for each group of pages as actually bound; or $1.50 for each issue in microfiche form; or $175.00 per magnetic tape. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 58 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–783–3238
Magnetic tapes	512–1530
Problems with public subscriptions	512–2303
Single copies/back copies:	
Paper or fiche	783–3238
Magnetic tapes	512–1530
Problems with public single copies	512–2457
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Magnetic tapes	512–1530
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

ATLANTA, GA

When: September 15 at 9:30 a.m.
Where: Jimmy Carter Presidential Library
One Copenhill Avenue, Atlanta, GA
Reservations:
1–800–347–1997

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 58, No. 151
Monday, August 9, 1993

Agency for Health Care Policy and Research
NOTICES
Committees; establishment, renewal, termination, etc.:
Clinical practice guidelines development—
Cataract in adults; functional impairment management, 42326
Meetings:
Agency for Health Care Policy and Research, 42327

Agency for International Development
RULES
Acquisition regulations:
Miscellaneous amendments, 42254

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Site-specific health activities; State health departments and public health agencies, 42327

Agricultural Marketing Service
RULES
Limes and avocados grown in Florida, 42187
Organization, functions, and authority delegations:
Analytical testing services; agency reorganization, 42408
PROPOSED RULES
Milk marketing orders:
Chicago Regional, 42258

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Federal Grain Inspection Service
See Food Safety and Inspection Service
See Forest Service
See Soil Conservation Service
NOTICES
Privacy Act:
Systems of records, 42279

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Rapeseed plants, etc., 42280
Genetically engineered organisms for release into environment; permit applications, 42281

Army Department
See Engineers Corps
NOTICES
Committees; establishment, renewal, termination, etc.:
Inland Waterways Users Board, 42304
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Sartomer Co., Inc., 42305

Bonneville Power Administration
NOTICES
Environmental statements; availabili y, etc.:
Pacific Northwest commercial ser ices and rates, 42306

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Occupational safety and health—
Concurrent engineering systems and technologies research, design, and development, 42332
Lead poisoning prevention; States in collaboration with local health departments, 42330
Occupational health nurses in agricultural communities, 42334
Transportation equipment manufacturing and related industries; work-related musculoskeletal disorders and cardiovascular diseases reduction among workers, 42336
Meetings:
Idaho National Engineering Laboratory, 42338
Prevention Centers Grant Review Committee, 42339

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 42287

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 42300

Commodity Futures Trading Commission
RULES
Commodity Exchange Act:
Self-regulatory organization governing boards and major disciplinary committees; composition
Correction, 42361

Consumer Product Safety Commission
NOTICES
Flammability standard for upholstered furniture; petition, 42301

Defense Department
See Army Department
See Engineers Corps
See Navy Department
NOTICES
Agency information collection activities under OMB review, 42302
Defense Technology Transfer Working Group; inputs, 42301
Meetings:
Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force, 43302
Privacy Act:
Systems of records, 42302

Energy Department
See Bonneville Power Administration
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

PROPOSED RULES
Reimbursement for costs of remedial action at active uranium and thorium processing sites, 42450
NOTICES
Atomic energy agreements; subsequent arrangements, 42306
Grant and cooperative agreement awards:
Energy Concepts Co., 42306
University of—
Alabama-Birmingham, 42305
Meetings:
National Petroleum Council, 42309

Energy Efficiency and Renewable Energy Office
NOTICES
Investor-owned utilities; net income neutrality certification applications, 42308

Engineers Corps
RULES
Danger zones and restricted areas:
Kuluk Bay near Adak, AK, 42237
San Nicholas Island, CA, 42237
San Pedro Bay, CA; correction, 42237

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Exclusions, 42238
Four large-volume wastes from electric utility power plants coal combustion, 42466
PROPOSED RULES
Air programs; fuel and fuel additives:
California pilot test program and clean-fuel standards (CFVs) for light-duty vehicles and trucks, 42266
Water pollution control:
Great Lakes System; water quality guidance, 42266
NOTICES
Agency information collection activities under OMB review, 42320
Drinking water:
Public water supply supervision program—
Oregon, 42320
Hazardous waste:
State program adequacy determinations—
Louisiana, 42321

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 42190, 42192
British Aerospace, 42194
de Havilland, 42196
Short Brothers, PLC, 42197
PROPOSED RULES
Airworthiness directives:
British Aerospace, 42259
Fokker; correction, 42361
Learjet, 42262
McDonnell Douglas, 42261
NOTICES
Airport noise compatability program:
Noise exposure map—
Capital City Airport, MI, 42356
Meetings:
RTCA, Inc., 42357
Passenger facility charges; applications, etc.:
New Hanover International Airport, NC, 42357

Federal Bureau of Investigation
NOTICES
Meetings:
Uniform Crime Reporting Data Providers Advisory Policy Board, 42349

Federal Communications Commission
RULES
Common carrier services:
Billing name and address information; tariff requirements, 42253
Tariffs—
Interstate long-distance marketplace competition, 42251
Television broadcasting:
Equal employment opportunity rules and policies, 42247
PROPOSED RULES
Television broadcasting:
Major television markets; list, 42275

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 42360

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Iowa, 42322
Kansas, 42322, 42323
North Dakota, 42323
Wisconsin, 42323

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 42309
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Land Management Bureau, 42318
Applications, hearings, determinations, etc.:
Colorado Interstate Gas Co., 42318
Florida Gas Transmission Co., 42318
Hidroelectrica El Chocon S.A., 42318
Northern Natural Gas Co., 42319
Questar Pipeline Co., 42319
Texas Eastern Transmission Corp., 42319

Federal Grain Inspection Service
PROPOSED RULES
Grain inspection equipment; official performance requirements:
Wheat and soybean protein content; chemical reference method, 42257

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Chesapeake, VA, 42358

Federal Maritime Commission
PROPOSED RULES
Practice and procedure:
Miscellaneous amendments, 42273

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Bullock, William R., Sr., 42323
Cardinal Bancshares, Inc., et al., 42324

Edgemark Financial Corp. et al., 42324
Grupo Financiero Prime Internacional S.A. de C.V., 42324
National Penn Bancshares, Inc., et al., 42324

Federal Trade Commission
RULES
Pay-per-call services; advertising, operation, billing, and collection procedures, 42364

Fish and Wildlife Service
NOTICES
Agency information collection activities under OMB review, 42343
Endangered and threatened species:
Recovery plans—
Chamaecrista glandulosa, 42343
Florida panther, 42344

Food and Drug Administration
NOTICES
Biological products:
Export applications—
Pulmozyme (dornase alfa), 42339
Committees; establishment, renewal, termination, etc.:
Advertising and Promotional Labeling Staff, 42340

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Smoke flavorings and artificil smoke flavorings; approval, 42188

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Michigan, 42288
Minnesota
American Feeds & Livestock Co., Inc.; animal feed manufacturing plant, 42288
Picker International, Inc.; medical diagnostic equipment processing/distribution facility, 42287

Forest Service
NOTICES
Appeal exemptions; timber sales:
Lincoln National Forest, NM, 42282
Committees; establishment, renewal, termination, etc.:
Polyoxometalate Bleaching Consortium, 42282
Grants and cooperative agreements; availability, etc.:
Recycled fibers enzymatic deinking; consortium; correction, 42283
Timber bridge research joint venture agreements, 42283

Health and Human Services Department
See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Public Health Service

Health Care Financing Administration
NOTICES
Privacy Act:
Systems of records, 42341

Health Resources and Services Administration
See Public Health Service

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
RULES
Income taxes:
Capitalization and inclusion in inventory of certain costs, 42198
PROPOSED RULES
Income taxes:
Capitalization and inclusion in inventory of certain costs, 42263

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
France, etc., 42288
Bicycle speedometers from Japan, 42289
Color television receivers, except for video monitors, from Taiwan, 42291
Fishnetting of man-made fiber from Japan, 42291
Light-scattering instruments and parts from Japan, 42293
Pads for woodwind instrument keys from—
Italy, 42295
Photo albums and filler pages from Korea, 42298
Applications, hearings, determinations, etc.:
University of—
California, Irvine, et al., 42299

Interstate Commerce Commission
PROPOSED RULES
Tariffs and schedules:
Range tariffs; fax filing, 42276
Tariff indexes, 42277
NOTICES
Agency information collection activities under OMB review, 42348
Motor carriers:
Range tariffs; show cause proceedings, 42348
Rail carriers:
Railroad revenue adequacy determinations, 42349

Justice Department
See Federal Bureau of Investigation

Land Management Bureau
RULES
Public land orders:
Alaska, 42246
Oregon, 42245
NOTICES
Coal leases, exploration licenses, etc.:
Utah, 42344
Oil and gas leases:
Colorado, 42345
Realty actions; sales, leases, etc.:
Arizona, 42346
California, 42346

Minerals Management Service
NOTICES
Agency information collection activities under OMB review, 42347, 42348

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council, 42349

National Labor Relations Board
RULES
Privacy Act; implementation, 42234

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 42255, 42256
NOTICES
Meetings:
South Atlantic Fishery Management Council, 42300
Permits:
Marine mammals, 42300

Navy Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Medi-Train, Inc., 42305

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 42360
Applications, hearings, determinations, etc.:
Georgia Power Co. et al., 42350
GPU Nuclear Corp., 42352

Public Health Service
See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
PROPOSED RULES
National Institutes of Health; special volunteer services, 42270

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 42360

Small Business Administration
NOTICES
Disaster loan areas:
Illinois, 42354
Missouri, 42355
Small Business Size Standards; environmental services, 42355
Applications, hearings, determinations, etc.:
United Financial Resources Corp., 42355

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Gooding Constructed Wetland, ID, 42286

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 42355
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 42356

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 42358

Separate Parts In This Issue

Part II
Federal Trade Commission, 42364

Part III
Department of Agriculture, Agricultural Marketing Service, 42408

Part IV
Department of Energy, 42450

Part V
Environmental Protection Agency, 42466

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

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
29....42408
52....42408
55....42408
58....42408
59....42408
61....42408
70....42408
90–159....42408
180....42408
911....42187
915....42187

Proposed Rules:
801....42257
1030....42258

9 CFR
317....42188
318....42188
381....42188

10 CFR

Proposed Rules:
765....42450

14 CFR
39 (5 documents)....42190, 42192, 42194, 42196, 42197

Proposed Rules:
39 (4 documents)....42259, 42261, 42262, 42361

16 CFR
308....42364

17 CFR
1....42361

26 CFR
1....42199
602....42199

Proposed Rules:
1....42263

29 CFR
102....42234

33 CFR
334 (3 documents)....42237

40 CFR
261 (2 documents)....42238, 42466

Proposed Rules:
88....42266
122....42266
123....42266
131....42266
132....42266

43 CFR

Public Land Orders:
6990....42245
6991....42245
6992....42246

45 CFR

Proposed Rules:
57a....42270

46 CFR

Proposed Rules:
502....42273

47 CFR
1....42247
21....42247
25....42247
61 (2 documents)....42251, 42253
64....42253
69....42253
73....42247
74....42247
76....42247
100....42247

Proposed Rules:
76....42275

48 CFR
709....42254
726....42254
737....42254
752....42254

49 CFR

Proposed Rules:
1002....42276
1312 (2 documents)....42276, 42277

50 CFR
672 (2 documents)....42255, 42256

Rules and Regulations

Federal Register
Vol. 58, No. 151
Monday, August 9, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV92-911-1IFR; Amendment 1]

Increase in Expenses for Marketing Orders Covering Fresh Limes and Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes an increase in expenses for the Florida Lime Administrative Committee under Marketing Agreement (M.O.) No. 911 and the Florida Avocado Administrative Committee (committees) under M.O. 915 for the 1993–94 fiscal year. Authorization of this budget increase will enable the committees to incur additional expenses that are reasonable and necessary to administer their programs.

DATES: Effective April 1, 1993, through March 31, 1994. Comments received by September 8, 1993 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Pimenthal, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276, telephone: (813) 299–4886; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 911 (7 CFR part 911) regulating the handling of fresh limes grown in Florida and Marketing Agreement and Order No. 915 (7 CFR part 915) regulating the handling of fresh avocados grown in Florida. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, limes and avocados grown in Florida are subject to assessments applicable to all assessable limes and avocados handled during the 1993–94 fiscal year, which began April 1, 1993, through March 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 20 handlers of limes and 40 handlers of avocados regulated under the marketing order each season and approximately 260 lime and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The committees met on December 9, 1992, and unanimously recommended total expenses for the 1993–94 fiscal year of $106,346 and an assessment rate of $0.16 per bushel for their respective committees. This action was published as an interim final rule in the **Federal Register** (58 FR 8533, February 16, 1993) and provided a 30-day comment period which ended March 18, 1993.

Each committee met again February 11, 1993, and unanimously recommended to increase budgeted expenses for both limes and avocados to $108,346. As a result, the committees submitted a comment to the Department to increase their budgeted expenses by $2,000.

The $2,000 increase in expenditures for each committee will finance an aerial survey on which a tree count can be conducted, scheduled for March 1994. This survey is necessary due to the hurricane that hit the production area last August. The strong winds uprooted many lime and avocado trees. The aerial survey will give a better idea

of crop size for assessment and estimating purposes by the committees.

The committees' 1993–94 fiscal year expenses and assessment rate approvals, including the recommended increase in expenses, were adopted in a final rule and published in the **Federal Register** (58 FR 33757, June 21, 1993).

Each committee met again on June 9, 1993, and unanimously recommended to increase their budget of expenses from $108,346 to $113,846, representing an increase of $5,500 for each committee. Each committee deems the increase necessary in order to finance additional research on the impact of increased water supplies on the water table in the lime and avocado production areas.

This action amends the two previously finalized sections that appeared in the **Federal Register**. The assessment rates that were previously established for each committee will not be changed. Adequate funds are available from the committees' reserves to cover the increases in expenses resulting from this action. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 911

Marketing agreements and orders, Limes, Reporting and recordkeeping requirements.

7 CFR Part 915

Marketing agreements and orders, Avocados, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

§ 911.232 (Amended)

2. Section 911.232 is amended by changing "$108,346" to "$113,846."

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

§ 915.232 (Amended)

2. Section 915.232 is amended by changing "$108,346" to "$113,846."

Dated: August 2, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–18867 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Parts 317, 318, and 381

[Docket No. 91–017F]

RIN 0583–AB36

Approval of Smoke Flavorings and Artificial Smoke Flavorings

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations by deleting specific requirements for prior Agency approval for the use of smoke flavorings and artificial smoke flavorings in meat and poultry products. Prior FSIS approval is no longer necessary because smoke flavorings and artificial smoke flavorings are now generally recognized as safe (GRAS) by the Food and Drug Administration.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This final rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat or poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat or poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA or PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

This final rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR part 335 and part 381, subpart W, must be exhausted prior to any judicial challenge to the application of the

provisions of this rule with respect to labeling decisions.

Effects on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities. Currently, FSIS is aware of 21 firms that manufacture smoke flavorings and artificial smoke flavorings for use in products prepared in official establishments. It is believed that the manufacture of these substances is not a major part of the business of most of these 21 firms, large or small. FSIS has no information that would indicate that this rule would affect any of these entities in a significant manner.

Background

Smoke flavorings and artificial smoke flavorings are currently listed as "Flavoring agents" in the charts of approved substances in § 318.7(c)(4) of the Federal meat inspection regulations and in § 381.147(f)(4) of the poultry products inspection regulations (9 CFR 318.7(c)(4) and 381.147(f)(4)). Unlike other flavorings, however, each specific smoke flavoring has been permitted in federally inspected meat and poultry products only upon prior FSIS review and approval. Such approved smoke flavorings and artificial smoke flavorings were subsequently listed in the Agency's List of Proprietary Substances and Nonfood Compounds. This policy was initiated in the 1960's to ensure safety, at that time, of a relatively new product used in meat and poultry products.

Current Regulations

The Food and Drug Administration (FDA) has primary responsibility over the safety and use of food and color additives. Over the years, FDA has conducted reviews of the safety of smoke flavorings and artificial smoke flavorings. FDA has now concluded that these substances, when produced under good manufacturing practices, are generally recognized as safe under the food additives provisions of the Federal Food, Drug, and Cosmetic Act. Under the circumstances, FSIS's preapproval of such additives, on a case-by-case basis, is no longer necessary.

Proposed Rule

On December 4, 1992, FSIS published a proposed rule in the **Federal Register** (57 FR 57390) to amend the Federal meat and poultry products inspection regulations by deleting specific requirements for prior Agency approval on the use of smoke flavorings and artificial smoke flavorings. The Agency proposed to delete the word "approved" from the phrases "approved artificial smoke flavoring" and "approved smoke flavoring" in 9 CFR 317.2(j)(3), which indicates that smoke flavorings and artificial smoke flavorings must be approved, on a case-by-case basis, prior to use in meat products. In addition, FSIS proposed to amend the charts of substances in 9 CFR 318.7(c)(4) and 9 CFR 381.147(f)(4) by deleting the words "program approved" from the entries for smoke flavoring and artificial smoke flavoring, and deleting the footnotes identifying smoke flavorings and artificial smoke flavorings as proprietary products. All smoke flavorings and artificial smoke flavorings would continue to be subject to all restrictions that apply to the use of any flavoring prescribed in 9 CFR parts 317, 318, 319, and 381.

Discussion of Comments

FSIS received four comments in response to the proposed rule—one from the Small Business Administration (SBA), one from a meat and poultry trade association, and two from food manufacturers. The trade association and the food manufacturers were in favor of the proposed rule. The SBA did not take a position on the issues proposed; however, it did express an opinion regarding the preparation of a regulatory impact analysis.

The SBA commented that, even though the proposed rule would impact positively upon small entities, the Agency should have prepared a regulatory impact analysis supporting that determination. SBA further advised that FSIS misinterpreted the Regulatory Flexibility Act (RFA) by not developing such an analysis. For each rulemaking, FSIS determines whether a proposed rule would impact significantly upon a substantial number of small entities, as prescribed in the RFA. This determination is not based on whether the impact would be positive or negative, but rather on whether a substantial number of small entities would be significantly affected. Currently, FSIS is aware of 21 firms that manufacture smoke flavorings and artificial smoke flavorings for use in products prepared in official establishments. It is believed that the manufacture of these substances is not a major part of the business of most of these 21 firms, large or small. FSIS has no information that would indicate that this rule would affect any of these entities in a significant manner.

The Administration has determined that (1) the use of smoke flavoring and artificial smoke flavoring will not render the product in which they are used adulterated, misbranded, or otherwise not in compliance with the requirements of the FMIA and the PPIA, (2) the use of these substances is functional and suitable for the intended purpose, and (3) the substances are used at the lowest level necessary to accomplish the intended technical effect. Accordingly, because of these determinations and the positive comments received in response to the proposed rule, FSIS is adopting the proposed rule as published.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 318

Food additives, Meat inspection.

9 CFR Part 381

Food additives, Poultry inspection.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317, 318, and 381 to read as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2(j)(3) is amended by removing the word "approved" in both places.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§ 318.7 [Amended]

4. In the table in § 318.7(c)(4) under the Class of substance "Flavoring agents; protectors and developers," the substances "Program approved artificial smoke flavoring" and "Program approved smoke flavoring" are revised to read "Artificial smoke flavoring" and "Smoke flavoring," and the footnote "1" designations are removed. Furthermore, the text of footnote 1 at the end of the table is removed and footnote 1 is designated as "Reserved."

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

5. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

§ 381.147 [Amended]

6. In the table in § 381.147(f)(4) under the Class of substance "Flavoring agents; protectors and developers," the substances "Approved artificial smoke flavorings" and "Approved smoke flavoring" are revised to read "Artificial smoke flavoring" and "Smoke flavoring," and the footnote "2" designations are removed. Furthermore, the text of footnote 2 at the end of the table is removed and footnote 2 is designated as "Reserved."

Done at Washington, DC, on August 2, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-18997 Filed 8-6-93; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-109-AD; Amendment 39-8646; AD 93-14-21]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747-400 series airplanes. This action requires the installation of a system that ensures full pitot and total air temperature heat in the event an airplane enters "ground mode" while the airplane is in flight. This AD action also requires a revision to the FAA-approved Airplane Flight Manual that imposes operating limitations in the event hydraulic system number one or four becomes inoperative. This amendment is prompted by two incidents of airplanes losing pressure in hydraulic system number four. The actions specified in this AD are intended to reduce the effect on airplane systems should they enter ground operating mode while the airplane is in flight.

DATES: Effective August 9, 1993.

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

Comments for inclusion in the Rules Docket must be received on or before October 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-109-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory Dunn, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2799; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: Recently, the FAA received two reports of in-service Model 747-400 series airplanes losing pressure in hydraulic system number four, which resulted in the airplanes entering "ground mode" while the airplanes were in flight. In these two incidents, there were no obvious flight deck indications to warn the flight crew that the airplane had entered into the "ground mode." The FAA has determined that when there is a loss of pressure in hydraulic system number four, the wing gear trucks may relax sufficiently to exceed the tilted position indication. When this occurs on the sensing systems for both the left and right wing gear trucks, the airplane will enter into the "ground mode." Moreover, if hydraulic system one is depressurized and the body gear trucks relax sufficiently, the airplane will enter the "ground mode" when the gear is extended for landing. Analysis indicates that the following systems may be affected by this type of failure:

1. Pitot/Static Probe Heat: Reduction of heat in the "ground mode" may cause ice to build up, which subsequently may cause the air data computer to send erroneous information to other systems such as the integrated display system, flight instrument system, stall warning system, and overspeed warning system.

2. Cowl Thermal Anti-Ice System: The primary ice detection system becomes inoperative in "ground mode," and "cowl thermal anti-ice" must be selected manually when required.

3. Wing Thermal Anti-Ice System: The wing thermal anti-ice system becomes inoperative in both "AUTO" and "manual" modes.

4. Total Air Temperature Probe Heaters: Heaters turn off in the "ground mode." Ice build up may affect engine settings during climb-out and go-around, but would not be considered an operational concern.

5. Horizontal Stabilizer and Rudder Module: The stabilizer speed trim deactivates in "ground mode" with minimal impact on airplane handling characteristics. The rudder ratio changer may default to the "low airspeed (high authority) mode" when accompanied by anomalies in the air data computer. Excessive rudder input could damage the vertical stabilizer.

6. Yaw Damper: The yaw damper enters the normal "on ground, no rudder command mode." The airplane is stable throughout all flight regimes without a functioning yaw damper. However, pilot workload increases during turbulence.

7. Fuel Management System: Fuel cannot be transferred from the horizontal stabilizer fuel tank or reserve tanks 2 and 3. Fuel in those tanks becomes unusable if "ground mode" is entered with fuel in those tanks. Specific fuel feed procedures must be followed to avoid exceeding the airplane center of gravity limits.

8. Thrust Reversers: The thrust reverser aisle stand flight lockout mechanisms are released in "ground mode." The thrust reversers will deploy and the leading edge flaps will retract, if the reverse thrust levers are pulled. There is no indication of "flight lockout release" to the flight crew.

9. Auto-Throttle: Auto-throttle is inoperative in "ground mode" (hydraulic system four loss only); however, an annunciation is provided to the crew.

10. Automatic Flight Idle: In "ground mode," automatic selection of "approach idle" will not occur when approach/landing flaps are selected, or when "cowl thermal anti-ice" is commanded "ON." (Airplane go-around performance is based on engine acceleration capability from the approach idle setting; sufficient bleed air flow for cowl thermal and anti-ice is dependent on the approach idle power setting.)

11. Cabin Pressurization System: Below 15,000 feet mean sea level (MSL), the outflow valve opens gradually in "ground mode" to depressurize the airplane with no effect above 15,000 feet MSL.

12. Transponder: The transponder becomes disabled in the "ground mode." Some airplanes have an optional control switch, which would permit the flight crew to switch to the "manual mode."

13. Traffic Collision Avoidance System (TCAS): TCAS becomes inoperative in the "ground mode;" however, a TCAS status message would be annunciated to the flight crew.

14. Auxiliary Power Unit (APU) GEN 2: APU "Avail" light illuminates in "ground mode" on P5 panel when the APU is running.

15. Forward Cargo Ground Exhaust System (KLM only): The forward ground exhaust valves open in "ground mode" if the air conditioning system for the forward cargo compartment is selected "ON." Rapid depressurization occurs and results in an engine indication and crew alerting system (EICAS) "Cabin Altitude" warning message.

16. Upper Deck Door Flight Lock: The flight lock actuator will not energize to lock in air in "ground mode;" however, a blue "DR GND Mode" light will be annunciated above each upper deck door.

Depressurization of the hydraulic system number one or four can result in various electrical and avionics systems entering the ground operating mode while the airplane is in flight.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–30A2069, dated July 15, 1993, that describes procedures for installation of a system that ensures full pitot and total air temperature heat in the event an airplane enters "ground mode" while the airplane is in flight.

Boeing has issued 747–400 Operations Manual Bulletin 93–5, dated July 26, 1993, that describes flight crew procedures to impose operating limitations when hydraulic system number one or four is inoperative.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747–400 series airplanes of the same type design, this AD is being issued to reduce the effect on the airplane systems and the flight crew should the airplane enter ground operating mode while the airplane is in flight. This AD requires a revision to the FAA-approved Airplane Flight Manual that imposes operating limitations in the event the hydraulic system number one or four becomes inoperative. This AD also requires installation of a system that ensures full pitot and total air temperature heat in the event an airplane enters "ground mode" while the airplane is in flight. These actions are required to be accomplished in accordance with the service information described previously.

This is considered to be interim action. The FAA is currently considering requiring modification of the air/ground system which will constitute terminating action for the operating limitation imposed by this AD action.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–109–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

93–14–21 Boeing: Amendment 39–8646. Docket 93–NM–109–AD.

Applicability: All Model 747–400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To reduce the effect on airplane systems should they enter ground operating mode while the airplane is in flight due to depressurization of hydraulic system number one or four, accomplish the following:

(a) Within 15 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by accomplishing paragraphs (a)(1) and (a)(2) of this AD.

(1) Insert a copy of 747–400 Operations Manual Bulletin 93–5, dated July 26, 1993, into the AFM.

(2) Include the requirements of paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD in the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

(i) Do not operate the airplane unless both the number 4 hydraulic engine driven pump and the number 4 hydraulic demand pump are operative.

(ii) If hydraulic system number 1 or 4 becomes inoperative while the airplane is in flight, the flight crew shall accomplish the procedures contained in 747-400 Operations Manual Bulletin 93-5, dated July 26, 1993.

(iii) If hydraulic system number 4 becomes inoperative while the airplane is in flight, the flight crew shall consider the ramifications of changes in system operation should the airplane enter the "ground mode." Specifically, consideration shall be given to trip and reserve fuel requirements, and enroute and destination forecasts for potential icing conditions. If these or other conditions present a significant adverse effect on safety if the flight is continued, the crew shall consider, as an alternative, diverting to a suitable airport. It is the responsibility of the captain to assess the situation and execute sound judgement to determine a safe course of action. A landing shall be made at the most suitable airport.

(b) Within 60 days after the effective date of this AD, install a system that provides full pitot and total air temperature heat in the event an airplane enters "ground mode" while the airplane is in flight, in accordance with Boeing Alert Service Bulletin 747-30A2069, dated July 15, 1993.

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

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

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

(e) The AFM revision shall be accomplished in accordance with 747-400 Operations Manual Bulletin 93-5, dated July 26, 1993. The installation shall be done in accordance with Boeing Alert Service Bulletin 747-30A2069, dated July 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 9, 1993.

Issued in Renton, Washington, on July 29, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-18914 Filed 8-6-93; 8:45 am]

BILLING CODE 4910-13-P

---

14 CFR Part 39

[Docket No. 93-NM-103-AD; Amendment 39-8654; AD 93-15-08]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes equipped with certain IPECO pilot and co-pilot seats. This action requires an inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure; and modification of loose bearings, and marking the seat identification label. This amendment is prompted by reports that pilot seats failed to lock horizontally due to the tracklock pin bearing becoming detached from its housing and wedged in the mechanism. The actions specified in this AD are intended to prevent the pilot and co-pilot seats from sliding freely on the track, which could lead to the inability of the pilots to control the airplane.

DATES: Effective August 24, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-103-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from IPECO, Inc., 3882 Del Amo Blvd., suite 604, Torrance, CA 90503. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Boffo, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2780; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: The FAA recently received a report of a pilot seat that failed to lock horizontally on an in-service Model 737 series airplane. The reported cause of the failure has been traced to a problem that occurred during production and resulted in the tracklock pin bearing becoming detached from its housing and wedged in the mechanism. Subsequent investigation by the manufacturer has revealed a second instance of a loose bearing. Under these conditions, the pilot and co-pilot seats might not lock into position after repositioning the seats. Consequently, the seat(s) would then slide freely on the track, with no means of locking into the correct position. This condition, if not corrected, could result in the pilot and co-pilot seats sliding freely on the track, which could lead to the inability of the pilots to control the airplane.

The FAA has reviewed and approved IPECO Service Bulletin A001-25-74, Issue 2, dated May 6, 1993, that describes procedures for a one-time inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure, and modification of loose bearings. This modification entails drilling a hole through the tracklock bracket, and installing a spirol pin through the tracklock bracket assembly into the tracklock bearing. This one-time inspection and modification will prevent the possibility of the pilot and co-pilot seats from sliding freely on the track. The service bulletin also describes procedures for marking the seat identification label using vibro-etch or a similar method.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737 series airplanes of the same type design, this AD is being issued to prevent the pilot and co-pilot seats from sliding freely on the track, which could lead to the inability of the pilots to control the airplane. This AD requires a one-time inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure; and modification of loose bearings, and marking the seat identification label. The actions are required to be accomplished in accordance with the service bulletin described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–103–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

93–15–08 Boeing: Amendment 39–8654. Docket 93–NM–103–AD.

Applicability: Model 737 series airplanes equipped with IPECO, Model 093, pilot and co-pilot seats, having seat serial numbers up to and including 21121; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the pilot and co-pilot seats from sliding freely on the track, which could lead to the inability of the pilots to control the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform an inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure by attempting to rotate the head of the bearing in either direction in accordance with IPECO Service Bulletin A001–25–74, Issue 2, dated May 6, 1993.

(1) If a bearing rotates in either direction: Prior to further flight, modify the tracklock bracket assembly in accordance with the service bulletin, and mark the seat identification label by service bulletin number, "A001–25–74", using vibro-etch or a similar method in accordance with the service bulletin.

(2) If a bearing does not rotate in either direction: Prior to further flight, mark the seat identification label, "INSPECTED REF. SBA001–25–74", using vibro-etch or a similar method in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install on any airplane a pilot/co-pilot seat that does not bear "INSPECTED REF. SBA001–25–74," on its identification label.

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

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

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

(e) The inspection, modification, and marking of the seat shall be done in accordance with IPECO Service Bulletin A001–25–74, Issue 2, dated May 6, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3	2	May 6, 1993.
2, 4–8	1	April 15, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from IPECO, Inc., 3882 Del Amo Blvd., suite 604, Torrance, CA 90503. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 24, 1993.

Issued in Renton, Washington, on August 2, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–18945 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92-NM-211-AD; Amendment 39-8632; AD 93-14-08]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, that requires an inspection to detect cracking of the aft end of the wing rib boom angles on the left and right engine, and repair or replacement of the wing rib boom angle assemblies, if necessary. This amendment is prompted by the detection of cracks in the engine outboard rib boom angles at the main landing gear (MLG) actuator attachment point. The actions specified by this AD are intended to prevent structural failure of the actuator attachment point, which could lead to collapse of the MLG.

DATES: Effective September 8, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model ATP series airplanes was published as a supplemental notice of proposed rulemaking in the **Federal Register** on April 27, 1993 (58 FR 25579). That action proposed to require an inspection to detect cracking of the aft end of the wing rib boom angles on the left and right engine, and repair or replacement of the wing rib boom angle assemblies, if necessary.

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

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $990, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

93-14-08 British Aerospace: Amendment 39-8632. Docket 92-NM-211-AD

Applicability: All Model ATP series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main landing gear actuator attachment point, which could lead to collapse of the main landing gear, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, or within 12 months since airplane manufacture, whichever occurs later, conduct a detailed visual inspection to detect cracking of the aft end of the engine outboard rib boom angles under the wing rib outboard of the left and right engine, in accordance with British Aerospace Service Bulletin ATP-57-13, Revision 1, dated January 15, 1993.

(b) If no crack is detected, repeat the detailed visual inspection at intervals not to exceed 3,000 landings or 12 months, whichever occurs first.

(c) If any crack is detected on only one rib boom angle during any inspection required by paragraph (a) or (b) of this AD, and that crack does not extend beyond bolt hole X, accomplish either paragraph (c)(1), (c)(2), or (c)(3) of this AD.

Note: Procedures for addressing cracks found in both rib boom angles are contained in paragraphs (f), (g), and (h) of this AD.

(1) Prior to further flight, repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 300 hours time-in-service, reinspect the rib boom angle for crack propagation, in accordance with British Aerospace Service Bulletin ATP-57-13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 6 months after discovery of the crack, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (e) of this AD, prior to further flight, either repair the rib boom angle in accordance with a method approved by the Manager,

Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(d) If any crack is detected on only one rib boom angle during any inspection required by paragraph (a) or (b) of this AD, and that crack extends beyond bolt hole X, but not beyond bolt hole Y or down towards bolt hole A, accomplish either paragraph (d)(1), (d)(2), or (d)(3) of this AD.

(1) Prior to further flight, repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle in accordance with the service bulletin.

(3) At intervals not to exceed 100 hours time-in-service, reinspect the rib boom angle for additional crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 3 months after discovery of the crack, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (e) of this AD, prior to further flight, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(e) If any crack is detected on only one rib boom angle during any inspection required by paragraph (a) or (b) of this AD, and that crack extends beyond bolt hole Y or into bolt hole A, accomplish either paragraph (e)(1), (e)(2), or (e)(3) of this AD.

(1) Prior to further flight, repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 50 hours time-in-service, reinspect the rib boom angle for additional crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 1 month after discovery of the crack, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (e) of this AD, prior to further flight, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(f) If any crack is detected on both rib boom angles during any inspection required by paragraph (a) or (b) of this AD, and cracks do not extend beyond bolt hole X, accomplish either paragraph (f)(1), (f)(2), or (f)(3) of this AD.

(1) Prior to further flight, repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 100 hours time-in-service, reinspect the rib boom angles for crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 3 months after discovery of the cracks, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (h) of this AD, prior to further flight, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(g) If any crack is detected on both rib boom angles during any inspection required by paragraph (a) or (b) of this AD, and cracks extend beyond bolt hole X, but not beyond bolt hole Y or down towards bolt hole A, accomplish either paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Prior to further flight, repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 50 hours time-in-service, reinspect the rib boom angles for additional crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 1 month after discovery of the cracks, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (h) of this AD, prior to further flight, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(h) If any crack is detected on both rib boom angles during any inspection required by paragraph (a) or (b) of this AD, and cracks extend beyond bolt hole Y or into bolt hole A, accomplish either paragraph (h)(1) or (h)(2) of this AD.

(1) Prior to further flight, repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

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

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

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

(k) The inspections and replacements shall be done in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on September 8, 1993.

Issued in Renton, Washington, on July 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–18943 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–124–AD; Amendment 39–8653; AD 93–15–07]

Airworthiness Directives; de Havilland, Inc., Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all de Havilland Model DHC–7 series airplanes. This action requires inspection of upper lockstrut sub-assemblies to detect cracking, and replacement, if necessary. This amendment is prompted by a report of failure of an upper lockstrut sub-assembly, which led to partial collapse of one of the main landing gears. The actions specified in this AD are intended to prevent failure of the upper lockstrut sub-assembly, which could lead to partial collapse of the main landing gear.

DATES: Effective August 9, 1993.

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

Comments for inclusion in the Rules Docket must be received on or before October 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–124–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on all de Havilland Model DHC–7 series airplanes. Transport Canada Aviation advises that an incident of upper lockstrut sub-assembly failure occurred recently, which led to partial collapse of one of the main landing gears. Failure of the upper lockstrut sub-assembly was caused by fatigue cracking, which led to tension overload. Fatigue cracking was possibly a result of undampened gear extension, which can occur if the landing gear is extended at higher than recommended flight speeds, if the lock release actuator is not properly bled after removal or replacement, or if excessive wear is present in the lock stay actuator joints. Failure of the upper lockstrut sub-assembly, if not corrected, could result in partial collapse of the main landing gear.

De Havilland has issued Alert Service Bulletin S.B. A7–32–100, dated July 7, 1993, that describes procedures for conducting a one-time non-destructive testing inspection of upper lockstrut sub-assemblies, part numbers 15709–7 and 15709–9, to detect cracking, and replacement of any discrepant sub-assembly with a serviceable sub-assembly. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–93–11, dated July 7, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the upper lockstrut sub-assembly, which could lead to partial collapse of the main landing gear. This AD requires a one-time non-destructive inspection of upper lockstrut sub-assemblies to detect cracking, and replacement of any discrepant sub-assembly with a serviceable sub-assembly. The actions are required to be accomplished in accordance with the service bulletin described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–124–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

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

93-15-07 De Havilland, Inc.: Amendment 39-8653. Docket 93-NM-124-AD.

Applicability: All Model DHC-7 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the upper lockstrut sub-assembly, which could lead to partial collapse of the main landing gear, accomplish the following:

(a) Within 250 landings after the effective date of this AD, conduct a non-destructive testing inspection of upper lockstrut sub-assemblies, part numbers 15709-7 and 15709-9, to detect cracking, in accordance with de Havilland Alert Service Bulletin S.B. A7-32-100, dated July 7, 1993.

(1) If any crack is detected, prior to further flight, replace the discrepant sub-assembly with a serviceable sub-assembly in accordance with the service bulletin.

(2) If no crack is detected, no further action is required by this AD.

(b) Within 5 days after completion of the inspection required by paragraph (a) of this AD, operators must submit a report containing details of any cracked upper lockstruts found to de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada; fax (416) 375 4539. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et *seq.*) and have been assigned OMB Control Number 2120-0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

(e) The inspection and replacement shall be done in accordance with de Havilland Alert Service Bulletin S.B. A7-32-100, dated July 7, 1993. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 9, 1993.

Issued in Renton, Washington, on August 2, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-18944 Filed 8-6-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-21-AD; Amendment 39-8633; AD 93-14-09]

Airworthiness Directives; Short Brothers, PLC, Model SD3-SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3-SHERPA series airplanes, that requires modification of the power supply to the emergency lighting system and a subsequent functional test of the system. This amendment is prompted by an engineering analysis, which revealed that, in the event of loss of normal electrical power, the emergency lighting system may fail to illuminate or remain illuminated. The actions specified by this AD are intended to prevent failure of the emergency lights to illuminate during an emergency.

DATES: Effective September 8, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3-SHERPA series airplanes was published in the **Federal Register** on April 12, 1993 (58 FR 19073). That action proposed to require modification of the power supply to the emergency lighting system and a subsequent functional test of the system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,750, or $1,375 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

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

93-14-09 Short Brothers, PLC: Amendment 39-8633. Docket 93-NM-21-AD.

Applicability: Model SD3-SHERPA series airplanes; serial numbers SH3201 through SH3210, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the emergency lighting system to illuminate during an emergency, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the power supply to the emergency lighting system and perform a functional test of the system in accordance with Shorts Service Bulletin SD3 SHERPA-33-1, dated January 17, 1993.

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

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

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

(d) The modification shall be done in accordance with Shorts Service Bulletin SD3 SHERPA-33-1, dated January 17, 1993, which includes Attachment to Service Bulletin Drawing SD3 SHERPA-33-1/A. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1993.

Issued in Renton, Washington, on July 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-18942 Filed 8-6-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

T.D. 8482

RIN 1545-AQ90

Capitalization and Inclusion in Inventory of Certain Costs

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations under section 263A of the Internal Revenue Code of 1986 relating to accounting for costs incurred in producing property and acquiring property for resale. Section 263A was enacted as part of the Tax Reform Act of 1986. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Omnibus Budget Reconciliation Act of 1989. This final regulation affects all taxpayers subject to section 263A.

DATES: *Effective date:* January 1, 1994.

Comments are requested from taxpayers on or before November 8, 1993, regarding the approach for implementing method changes required under the final regulations.

FOR FURTHER INFORMATION CONTACT: Ellen McElroy of the Income Tax and Accounting Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:IT&A:07), (202) 622-4970, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1233. The estimated annual burden per recordkeeper varies from one hour to ten hours, depending on individual circumstances, with an estimated average of one hour.

These estimates are approximations based on information available to the Internal Revenue Service (the Service) Individual recordkeepers may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed

to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On March 30, 1987, the Internal Revenue Service published in the **Federal Register** a notice of proposed rulemaking (52 FR 10118) by cross reference to temporary regulations (T.D. 8131) published the same day (52 FR 10052). Amendments to the notice of proposed rulemaking and temporary regulations were published in the **Federal Register** on August 7, 1987, by notice of proposed rulemaking (52 FR 29391) by cross reference to temporary regulations (T.D. 8148) published the same day (52 FR 29375). A public hearing was held on December 7, 1987. After consideration of the public comments regarding the proposed regulations, they are adopted as revised by this Treasury decision.

Explanation of Statutory Provisions

Section 263A (the uniform capitalization rules) was enacted as part of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 1986–3 C.B. Vol. 1 (the 1986 Act). The statute was amended as part of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, 101 Stat. 1330, 1987–3 C.B. Vol. 1 (the 1987 Act), the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647, 102 Stat. 3342, 1988–3 C.B. Vol. 1 (the 1988 Act), and the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 103 Stat. 2106 (the 1989 Act).

Prior to the enactment of section 263A, the rules regarding the capitalization of costs incurred in producing property were deficient in two respects. First, no uniform system regarding the capitalization of costs incurred in producing property existed. Rather, costs were capitalized under a variety of Internal Revenue Code provisions depending on the nature of the underlying property and its intended use. Second, costs incurred in producing, acquiring, or carrying property were permitted, in some instances, to be deducted currently, rather than accounted for in the year when the property was used or sold.

Section 263A was enacted to provide a single, comprehensive set of rules to govern the capitalization of the costs of producing, acquiring, and holding property, subject to appropriate exceptions where application of the rules might be unduly burdensome. These rules are designed to more accurately reflect income and prevent unwarranted deferral of taxes by properly matching income with related expenses. These rules are also intended to make the tax system more neutral by eliminating the differences in the former capitalization rules that created distortions in the allocation of economic resources and in the manner in which certain economic activity is organized. See S. Rep. No. 313, 99th Cong., 2d Sess. 140 (1986), 1986–3 C.B. (Vol. 3), 140.

Section 263A generally requires the capitalization of direct costs and indirect costs properly allocable to real property and tangible personal property produced by a taxpayer. Produced property includes both property that is sold to customers (e.g., inventory) and property that is used in a taxpayer's trade or business (self-constructed assets). Section 263A also requires the capitalization of direct costs and indirect costs properly allocable to real property and personal property acquired by a taxpayer for resale. Personal property acquired for resale includes both tangible and intangible personal property described in section 1221(1). Section 263A(b)(2)(B), however, excepts from the uniform capitalization rules personal property acquired by a taxpayer for resale if its average annual gross receipts for the preceding three taxable years do not exceed $10,000,000 (small reseller).

Certain Administrative Guidance

The following notices regarding section 263A have been published: Notice 87–76, 1987–2 C.B. 384; Notice 88–23, 1988–1 C.B. 490; Notice 88–24, 1988–1 C.B. 491; Notice 88–662, 1988–1 C.B. 548; Notice 88–78, 1988–2 C.B. 394; Notice 88–86, 1988–2 C.B. 401; Notice 88–92, 1988–2 C.B. 416; Notice 88–99, 1988–2 C.B. 422; Notice 88–103, 1988–2 C.B. 442; Notice 88–104, 1988–2 C.B. 443; Notice 88–113, 1988–2 C.B. 448; Notice 89–59, 1989–1 C.B. 700; and Notice 89–67, 1989–1 C.B. 723. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

The final regulations incorporate and supersede most of the guidance set forth in the notices referred to above. Therefore, unless otherwise noted, these notices are withdrawn for taxable years to which this Treasury decision applies. However, certain notices or portions thereof are not incorporated in this Treasury decision and continue to remain in effect in whole or in part as provided below.

The following notices continue to remain in effect in their entirety: Notice 87–76 (guidance for farmers); Notice 88–23 (ordering rules for method changes); Notice 88–24 (special election for farmers); Notice 88–62 (safe harbor for certain producers of creative properties); Notice 88–99 (guidance regarding interest capitalization issues); Notice 88–104 (application of section 263A to foreign persons); and Notice 89–59 (deadline for accounting method change requests regarding practical capacity). In addition, certain portions of the following notices continue to remain in effect: section IV (A) of Notice 88–86 (guidance regarding deferred intercompany exchanges); section IV (B) of Notice 88–86 (permission to elect a new base year for LIFO taxpayers); section V of Notice 88–86 (guidance for property produced in a farming business); section II (B) of Notice 89–67 (guidance for free-lance authors, artists, and photographers); section II (C) of Notice 89–67 (guidance for farmers); section III (E) of Notice 89–67 (application of section 263A to foreign persons).

The final regulations do not incorporate, in whole or in part, Notice 88–78, which provides guidance regarding accounting method changes for taxpayers that failed to timely comply with the uniform capitalization rules. Nevertheless, Notice 88–78 does not remain in effect. See the discussion of Accounting Method Changes below.

Public Comments

Simplification in General

Commentators made several suggestions for simplifying the rules provided in the temporary regulations and notices. As discussed in more detail below, the final regulations implement many of these suggestions. For example, the final regulations permit the use of a "historic absorption ratio" to determine additional capitalizable costs under section 263A. In addition, the final regulations provide rules that expand the availability of reasonable allocation methods in determining capitalizable costs, rules that except de minimis production activities of small resellers from the capitalization requirements of section 263A, and rules under which producers with de minimis indirect costs that use the simplified production method are deemed to have no additional capitalizable costs under section 263A.

Based on specific suggestions of commentators, the final regulations include a table of contents for all final and temporary regulations issued under section 263A. The regulations have also been reorganized to make them easier to use. Instead of having one long section with rules for producers and resellers as

the temporary regulations did, the final regulations include three sections organized so that rules relating primarily to producers are separate from rules relating primarily to resellers. In particular, the regulations provide general rules affecting both producers and resellers in § 1.263A–1, rules primarily affecting producers in § 1.263A–2, and rules primarily affecting resellers in § 1.263A–3.

Provisions Applicable to All Producers and Resellers

A. Relationship to Other Capitalization Provisions

The final regulations clarify that where statutory or regulatory exceptions limit the application of section 263A, costs may still be subject to capitalization under other provisions of the Internal Revenue Code and regulations. For example, a taxpayer not subject to section 263A may nonetheless be subject to the general capitalization provisions of section 263.

B. Property Provided Incident to the Provision of Services

Commentators questioned whether taxpayers that provide property to customers incident to the provision of services are subject to section 263A. The final regulations generally incorporate the de minimis exception of Notice 88–86 for acquired property provided to customers incident to the provision of services. However, the regulations expand this exception to cover all property, whether produced or acquired, provided incident to services. Specifically, the final regulations provide that section 263A does not apply to any property provided to a client (or customer) incident to the provision of services if the property provided to the client is (1) de minimis in amount, and (2) not inventory in the hands of the service provider.

C. Economic Performance

Commentators requested clarification on whether costs that have not met the economic performance requirement of section 461(h) must be capitalized. The final regulations incorporate section 461(h) and underlying regulations contained in T.D. 8408 (57 FR 12411 (April 10, 1992)). Accordingly, the final regulations provide that the amount of any costs required to be capitalized under section 263A may not be included in inventory or charged to capital accounts or basis by an accrual method taxpayer any earlier than the taxable year in which economic performance occurs.

D. Direct Material Costs

The temporary regulations define "direct material costs" differently from the definition of direct material costs contained in § 1.471–11(b)(2)(i). Commentators questioned why these definitions are different. To alleviate any confusion, the definition of direct material costs in the final regulations has been conformed to the definition of direct material costs provided in § 1.471–11(b)(2)(i).

E. Indirect Costs Subject to Capitalization

Consistent with the Congressional directive, the final regulations are patterned after the extended-period long-term contract regulations of § 1.451–3. See S. Rep. No. 313, 99th Cong., 2d Sess. 141–42 (1986), 1986–3 C.B. (Vol. 3) 141–42. Therefore, indirect costs that were capitalized under the extended-period long-term contract regulations are generally included in the list of indirect costs required to be capitalized under section 263A.

A few commentators requested clarification on the types of taxes required to be capitalized under the temporary regulations. Commentators suggested that excise taxes and franchise taxes (regardless of whether the tax is based on income, capital, etc.) be excluded from capitalization under section 263A. The final regulations adopt this suggestion only for franchise taxes that are based on income. Excluding only taxes based on income from the capitalization requirements of section 263A is consistent with the extended-period long-term contract regulations. See § 1.451–3(d)(6)(iii)(H).

Commentators objected to the treatment of depletion in the temporary regulations as an indirect cost required to be capitalized. In response to these concerns, and as indicated in Notice 88–86, the final regulations provide that depletion is properly allocable only to property that has been sold for purposes of determining gain or loss on the sale of the property.

Commentators questioned the distinction in the temporary regulations between engineering and design costs that are subject to capitalization under section 263A and research and experimental costs that are not. The final regulations clarify that engineering and design costs include pre-production costs, such as costs attributable to research, experimental, engineering and design activities, that do not qualify as research and experimental expenditures under section 174 and the regulations thereunder.

One commentator suggested that bidding expenses incurred with respect to a contract to sell standard stock items should not be capitalized because these expenses are essentially selling expenses, which generally are not capitalized. In order to insure that taxpayers are not required to capitalize what are essentially selling expenses, the regulations provide that bidding expenses are only required to be capitalized with respect to certain contracts to produce property and to acquire property for resale. These contracts include both (1) any agreement with respect to a specific unit of property providing for the production or sale of property to a customer if the agreement is entered into before the taxpayer produces or acquires the specific unit of property to be provided to the customer under the agreement, and (2) any agreement with a customer with respect to fungible property to the extent that, at the time the agreement is entered into, the taxpayer has on hand an insufficient quantity of completed fungible items of such property that may be used to satisfy the agreement (plus any other production or sales agreements of the taxpayer).

F Indirect Costs Not Subject to Capitalization

The final regulations expand the list of costs that are not subject to capitalization by providing that section 179 costs and warranty and product liability costs are not capitalized.

As in the temporary regulations, the final regulations except from section 263A, depreciation, amortization, and cost recovery allowances on equipment and facilities that have been placed in service but are temporarily idle. Certain aspects of this exception have been clarified in the final regulations in response to comments. The temporarily idle equipment and facilities exception has not been expanded to include costs other than depreciation, amortization, and cost recovery allowances. The Service and the Treasury believe that excluding other costs from this exception, such as insurance, taxes, etc. is consistent with Congressional intent that the section 263A regulations be patterned after the extended-period long-term contract regulations. See S. Rep. No. 313, 99th Cong., 2d Sess. 141–42 (1986), 1986–3 C.B. (Vol. 3) 141–42.

In addition, for the reasons set forth in the preamble accompanying T.D. 8148 (52 FR 29375), the final regulations continue to prohibit the use of any practical capacity concept or method to identify the fixed indirect costs subject to capitalization.

G. Service Costs

Under the temporary regulations, the total direct and indirect costs (service costs) of administrative, service, or support functions or departments (service departments) that directly benefit a particular production or resale activity must be directly allocated to that activity. In addition, service costs that benefit production or resale activities as well as other activities (mixed service costs) must be allocated to activities based on a factor that reasonably relates the incurring of the service cost to the benefits received by the activity. Commentators indicated that, notwithstanding the above guidance in the temporary regulations, service costs are difficult to identify and therefore difficult to allocate to property produced or property acquired for resale. In response, the final regulations provide definitions of service costs, and service departments, as well as two new categories of service costs, capitalizable service costs, and deductible service costs. In addition, to eliminate confusion about mixed service costs, the final regulations identify the portion of mixed service costs that are allocable to production or resale activities (capitalizable mixed service costs) and the portion of mixed service costs that are allocable to non-production or non-resale activities (deductible mixed service costs).

H. Cost Allocations

The temporary regulations provide general rules regarding how direct and indirect costs are allocated to or among the various activities of a taxpayer. Commentators stated that the temporary regulations do not provide specific guidance regarding how the allocation of costs to activities relates to determining the amount of section 263A costs that must be capitalized. In response to this concern, the final regulations explain that after section 263A costs are allocated to a production or resale activity, these costs are generally allocated to the items of property produced or property acquired for resale during the taxable year and capitalized to the items that remain on hand at the end of the taxable year.

The temporary regulations permit taxpayers to use a variety of methods for allocating section 263A costs among their activities and items of property produced or acquired for resale. For example, the temporary regulations permit the use of facts-and-circumstances allocation methods, such as a specific identification method, a burden rate method, a standard cost method, and generally any other reasonable allocation method. Generally, the final regulations continue to allow the use of these methods and adopt, with slight modifications, the criteria in the temporary regulations and Notice 88–86 for determining a reasonable allocation method. The final regulations also continue to permit taxpayers to use certain simplified methods in determining their section 263A costs. (The simplified methods are discussed in more detail below.)

Under the temporary regulations, mixed service costs must be allocated among a taxpayer's production or resale activities as well as its other activities. The temporary regulations permit taxpayers to use any reasonable method to make these allocations. They also provide that a direct reallocation method (which in general allocates mixed service costs to departments engaged in production or resale activities) and a step-allocation method (which in general allocates mixed service costs to all departments benefitting from the mixed service costs including other mixed service departments) are reasonable allocation methods. The final regulations incorporate these provisions and provide examples of a direct reallocation method and a step-allocation method.

I. Section 263A and Valuations of Inventory at Market

Section 263A does not explicitly address whether the uniform capitalization rules affect market valuations of inventory. However, the legislative history states, "[t]he uniform capitalization rules are not intended to affect the valuation of inventories on a basis other than cost. Thus, the rules will not affect the valuation of inventories at market by a taxpayer using the lower of cost or market method, or by a dealer in securities or commodities using the market method. However, the rules will apply to inventories valued at cost by a taxpayer using the lower of cost or market method." 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–305 (1986), 1986–3 C.B. (Vol. 4) 305.

The final regulations interpret the above language in accordance with the overall Congressional intent underlying section 263A. The final regulations provide that section 263A applies to inventories valued at cost, lower of cost or market (LCM), or market. Section 263A does not apply, however, in those cases where the market valuation used by the taxpayer generally equals the fair market value at which the taxpayer would sell its inventories to its customers less, if applicable, only the direct cost of disposition. Thus, section 263A, which applies in determining the cost of property, must be applied in determining the market value of any inventory for which market is determined with reference to replacement cost or reproduction cost. The Service and the Treasury believe that this approach satisfies the fundamental policy objective Congress sought by enacting section 263A—that is, to more accurately reflect income by eliminating "a mismatching of expenses and the related income and an unwarranted deferral of taxes." See S. Rep. No. 313, 99th Cong., 2d Sess. 140 (1986), 1986–3 C.B. (Vol. 3) 140.

The following example demonstrates the mismatching that would occur if section 263A costs were not included in determining the market value of inventory. A reseller, X, values its inventory using LCM in accordance with the FIFO inventory method. X purchases an item for $80 and incurs $8 of indirect costs attributable to the item. The item, which remains on hand at the end of X's taxable year, could be sold to a customer for $100 at year end. If the item is included in ending inventory using X's cost, determined in accordance with section 263A, the item would be valued at $88. On the other hand, if the item is included in ending inventory using its market value (i.e., the current bid price of the item) and section 263A is not applied in determining market at year end, the item would only be valued at $80. Thus, the $8 of additional section 263A costs that Congress intended to be matched against the ultimate $100 of income from the sale of the item would be deducted in a year prior to the year X sells the item.

Producers

A. Ownership of Property Produced

Commentators questioned whether a taxpayer that does not have formal or legal title to the property it is producing is considered a producer for purposes of section 263A. The final regulations generally provide that a taxpayer that does not hold legal title to the property it is producing must capitalize its production costs if the taxpayer is considered the owner of the produced property for federal income tax purposes.

The final regulations incorporate two statutory-based exceptions to this general rule. First, section 460(e)(1) provides that section 263A applies to a home construction contract unless that contract will be completed within two years of the contract commencement date and the taxpayer's average annual

gross receipts for the three preceding taxable years do not exceed § 10,000,000. Because section 460(e)(1) provides that section 263A applies to these home construction contracts (even if the contractor does not own the underlying property), the Service and the Treasury believe that ownership is not a prerequisite to capitalization under section 263A with respect to such contracts. Thus, the final regulations adopt the position in Q & A 4 of Notice 89–15, 1989–1 C.B. 634. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

Second, section 263A(g)(2) provides that, with respect to certain costs, a taxpayer is treated as producing any property that is produced for the taxpayer under contract. Therefore, a taxpayer that has property produced for it under contract is subject to section 263A even though it does not own the underlying property being produced.

Commentators suggested that contract be defined for this purpose in a manner that would minimize taxpayer compliance burdens. They noted that a broad interpretation of contract could include routine purchase orders, which would require taxpayers to allocate and capitalize a portion of their general and administrative expenses to items acquired under routine business arrangements. The Service and the Treasury are studying this issue further in connection with a project to finalize proposed regulations under section 263A(f) and intend to issue final regulations defining contract under section 263A(g)(2) when those proposed regulations are finalized. Therefore, the final regulations reserve the paragraph regarding the definition of a contract. The Service is requesting comments from taxpayers for a 60-day period after the publication of these final regulations in the **Federal Register** regarding the definition of a contract for these purposes.

B. Definition of Tangible Personal Property

Section 263A(b) provides that tangible personal property "include[s] a film, sound recording, video tape, book, or similar property." Additionally, the Conference Report to section 263A defines tangible personal property, for purposes of section 263A, as including "films, sound recordings, video tapes, books, and other similarly [sic] property embodying words, ideas, concepts, images, or sounds, by the creator thereof." 2 H.R. Conf. Rep. No. 841 n.1, 99th Cong., 2d Sess. II–308 (1986), 1986–3 C.B. (Vol. 4) 308 n.1.

The final regulations generally incorporate the definition of tangible personal property used in the Conference Report. The final regulations clarify the definition in the Conference Report by providing further guidance as to what constitutes other similar property for purposes of the tangible personal property definition. In general, the final regulations provide that other similar property is intellectual or creative property for which, as costs are incurred in producing the property, it is intended (or is reasonably likely) that any tangible medium in which the property is embodied will be mass distributed by the creator or any one or more third parties in a form that is not substantially altered. However, the final regulations provide an exception to this general rule. Any intellectual or creative property that is embodied in a tangible medium that is mass distributed merely incident to the distribution of a principal product or good of the creator is not other similar property for these purposes.

Several commentators inquired whether the enactment of section 263A has affected the Service's administrative position in Rev. Proc. 69–21, 1969–2 C.B. 303, (see § 601.601(d)(2)(ii)(*b*) of the Statement of Procedural Rules), that computer software development costs so closely resemble the kind of research and experimental expenditures that fall within the purview of section 174 as to warrant accounting treatment similar to that accorded such costs under section 174. The Service has no present intention of changing its administrative position contained in Rev. Proc. 69–21, but continues to study its viability. Thus, as long as Rev. Proc. 69–21 remains in effect, taxpayers are not required to capitalize (and may currently deduct) computer software development costs.

The temporary regulations provide that the costs of copyrights, licenses, and manuscripts, and other items that may be treated as intangible for other purposes of the Internal Revenue Code are treated as tangible personal property under section 263A (e.g., films, sound recordings, video tapes, and books). One commentator suggested that the final regulations delete the reference to licenses. However, the final regulations retain the reference to licenses because licenses are commonly used in the publishing, sound recording, and film industries and are appropriately considered a cost of publishing a book or producing a sound recording or film. The final regulations also add licensing and franchising fees (or amortization thereof) to the examples of indirect costs that are capitalized to the extent properly allocable to property produced or acquired for resale.

C. Definition of Produce

Many commentators suggested that produce be defined more precisely in the final regulations and that the final regulations include a complete list of all types of production activities. Other commentators requested that produce be defined more narrowly in the final regulations.

The final regulations do not adopt these suggestions. The Service and the Treasury believe that the determination of whether a taxpayer is a producer is generally a facts-and-circumstances determination that must take into account the nature of the taxpayer's trade or business activities. Further, the Service and the Treasury believe that many of the commentators' concerns regarding the scope of produce have been alleviated in the final regulations through the adoption of various de minimis rules. These rules include de minimis rules for property provided to customers incident to the provision of services, de minimis rules for property produced incident to resale activities, and rules treating producers using the simplified production method as having no additional section 263A costs if they incur de minimis indirect costs.

D. Pre-production Costs

Commentators questioned whether costs incurred prior to the commencement of production (pre-production costs) must be capitalized. Under the extended-period long-term contract regulations, pre-production costs (e.g., bidding expenses) are capitalized. Accordingly, the final regulations, which are patterned after the extended-period long-term contract regulations, clarify that pre-production costs must be capitalized if it is reasonably likely that they relate to production that will take place in the future. For example, a manufacturer must capitalize the costs of storing and handling raw materials before the raw materials are committed to production. Further, a real estate developer must capitalize taxes incurred with respect to property if it is reasonably likely the property will be subsequently developed.

E. Post-production Costs

Commentators questioned whether costs incurred subsequent to completion of production (post-production costs) must be capitalized. The legislative history explains that section 263A was intended to provide a uniform, comprehensive set of capitalization rules governing the cost of both producing and reselling property. S. Rep. No. 313, 99th Cong., 2d Sess. 140

(1986), 1986–3 C.B. (Vol. 3) 140. Because the legislative history specifically states that costs incurred by resellers incident to purchasing property, such as storage costs, must be capitalized, the final regulations clarify that similar costs incurred by producers (such as the cost of storing finished goods) must be capitalized as well. However, as indicated in Notice 88–86, the final regulations provide that producers may deduct the costs of an on-site storage facility to the same extent as resellers.

Reseller Provisions

A. Resellers With Production Activities

Commentators questioned whether personal property acquired by a small reseller becomes subject to the uniform capitalization rules under section 263A(g)(2) because the property is produced for the small reseller under contract (e.g., private label goods). In response, the final regulations provide that a small reseller is not required to capitalize additional section 263A costs to personal property produced for it under contract if the contract is entered into with an unrelated person incident to its resale activities and the property is sold to its customers.

In addition, commentators questioned whether a reseller otherwise subject to section 263A (e.g., a reseller with gross receipts of greater than $10,000,000) that acquires property for resale is prohibited from using the simplified resale method merely because the reseller is considered a producer with respect to the property produced for it under contract. The final regulations clarify that such a reseller is not ineligible to use the simplified resale method merely because its personal property acquired for resale is produced under contract with an unrelated third person.

The final regulations also generally provide that a small reseller is not required to capitalize additional section 263A costs associated with any personal property produced incident to its resale activities if the production activities are de minimis. For this purpose, a reseller's production activities are presumed de minimis if: (1) The gross receipts from the sale of property produced by the reseller are less than 10 percent of the total gross receipts of the trade or business; and (2) the labor costs allocable to the production activities of the trade or business are less than 10 percent of the total labor costs of the trade or business. Further, the final regulations generally provide that resellers are not precluded from using the simplified resale method solely by reason of a de minimis amount of production activity.

B. Costs Capitalized by Resellers

Commentators expressed concern that the temporary regulations were not clear on which indirect costs resellers are required to capitalize. The final regulations clarify that in addition to purchasing, storage, and handling costs, resellers must also capitalize other indirect costs that are properly allocable to property acquired for resale.

C. Storage Costs

Under the temporary regulations, resellers must capitalize their storage costs attributable to their off-site storage facilities but not their on-site storage facilities. The temporary regulations provide that an on-site storage facility is a facility which is physically attached to, and an integral part of, a retail sales facility where the taxpayer sells merchandise stored at the facility to retail customers physically present at the facility. Commentators suggested that the physically attached to and integral part of standards be modified to provide a broader definition of an on-site storage facility.

The final regulations retain both the physically attached to and integral part of standards. The Service and the Treasury believe that these standards are mandated by the legislative history of section 263A. This legislative history provides that off-site storage costs are the "costs of storing goods in a facility distinct from the facility wherein the taxpayer conducts retail sales of * * * goods." S. Rep. No. 313, 99th Cong., 2d Sess. 142 (1986), 1986–3 C.B. (Vol. 3) 142. The final regulations clarify, however, that a retail sales facility includes those portions of any specific retail site: Which are customarily associated with and are an integral part of the operations of that retail site; which are generally open each business day exclusively to retail customers; on or in which retail customers normally and routinely shop to select specific items of merchandise; and which are adjacent to or in immediate proximity to other portions of the specific retail site.

Based on several comments received, the final regulations permit certain non-retail customers to be treated as retail customers for purposes of determining whether a facility is a retail sales facility. For this purpose, a non-retail customer is treated as a retail customer if the following requirements are satisfied: the non-retail customer purchases goods at the facility under the same terms and conditions as are available to retail customers (e.g., no special discounts); the non-retail customer purchases goods in the same manner as a retail customer (e.g., the non-retail customer may not place orders in advance and must come to the facility to examine and select goods); retail customers shop at the facility on a routine basis (i.e., on most business days) and no special days or hours are reserved for non-retail customers; and more than 50 percent of the gross sales of the facility are made to retail customers.

The temporary regulations provide that a dual-function storage facility is a storage facility that serves as both an on-site storage facility and an off-site storage facility. They also provide that a dual-function storage facility is treated as an on-site storage facility to the extent of the ratio of gross on-site sales of the facility (i.e., gross sales of the facility made to retail customers visiting the premises in person) to total gross sales of the facility. The final regulations include this allocation ratio and also provide that prior to its computation a taxpayer must make appropriate adjustments for other uses of a dual-function storage facility.

D. Handling Costs

Handling costs are defined in the temporary regulations as the costs attributable to handling, processing, assembling, repackaging, and transporting property acquired for resale. For purposes of clarification, the final regulations provide definitions of each of the above terms associated with handling costs so that taxpayers can more easily distinguish handling activities from other activities not subject to section 263A.

In addition, commentators requested clarification regarding the types of handling costs that must be capitalized under section 263A. In response, the final regulations provide a bright-line test for determining which handling costs must be capitalized. Under this test, handling costs incurred at a retail sales facility with respect to property sold to retail customers at the facility are not required to be capitalized. Thus, for example, handling costs incurred at a retail sales facility to unload, unpack, mark, and tag goods sold to retail customers at the facility are not required to be capitalized. In addition, handling costs incurred at a dual-function storage facility with respect to property sold to customers from the facility are not required to be capitalized to the extent that the costs are incurred with respect to property sold in on-site sales. Handling costs attributable to property sold to customers from a dual-function storage facility in on-site sales are determined generally by comparing the

gross on-site sales of the facility to the total gross sales of the facility.

E. Exception for Repackaging Costs

Under the temporary regulations, the costs of repackaging goods in preparation for immediate delivery to particular customers are excepted from handling costs that resellers must capitalize if the repackaging occurs after the customer has ordered the goods. Commentators suggested that this repackaging exception be expanded to include all handling costs incurred after the customer orders the goods. The final regulations reserve the paragraph regarding the repackaging exception. Under a separate Notice of Proposed Rulemaking in the proposed rules section of this issue of the **Federal Register**, it is proposed that the repackaging exception be eliminated for the reasons discussed therein. However, until the Notice of Proposed Rulemaking is finalized, the paragraph in the temporary regulations providing the repackaging exception continues to apply.

F. Exceptions for Distribution Costs and Costs of Delivering Custom-Ordered Items

Under the temporary regulations, distribution costs are a type of handling costs that are not required to be capitalized (distribution cost exception). Distribution costs are defined in the temporary regulations as the cost of delivering goods directly to an unrelated customer.

Some commentators suggested that the cost of delivering goods to a related customer should be deductible just as the cost of delivering goods to an unrelated customer are deductible. Another commentator suggested that the cost of delivering goods to a related customer should be deductible unless the related persons are members of a consolidated group. As explained in the accompanying Notice of Proposed Rulemaking, these suggestions have not been adopted.

The temporary regulations also exclude from capitalization under section 263A the costs of delivering certain items from an off-site storage facility to a retail sales facility where the sale takes place, provided the items are specifically ordered by customers (custom order exception). The final regulations reserve the paragraph regarding the custom order exception and the distribution cost exception (including a provision regarding costs incurred transporting goods to a related person). As provided therein, the separate Notice of Proposed Rulemaking provides that these exceptions pertain only to transportation costs that are incurred generally outside a storage facility. For this purpose, costs incurred on a loading dock are considered incurred outside a storage facility. However, until the Notice of Proposed Rulemaking is finalized, the paragraphs in the temporary regulations providing the distribution cost exception and the custom order exception continue to apply.

Simplified Allocation Methods

The final regulations provide several simplified allocation methods for allocating direct and indirect costs to property produced and property acquired for resale. In general, these simplified methods determine aggregate amounts of additional section 263A costs allocable to ending inventory. Additional section 263A costs are those costs, other than interest, that were not capitalized under the taxpayer's method of accounting immediately prior to the effective date of section 263A, but that are required to be capitalized under section 263A. In addition, the final regulations provide a simplified method for allocating costs incurred in a service department (i.e., service costs) to property produced and property acquired for resale.

A. Simplified Production Method

The final regulations provide a simplified production method for purposes of determining the aggregate amount of additional section 263A costs that must be added to eligible property held by producers at the close of the taxable year. Under this method, producers determine additional section 263A costs by multiplying their section 471 costs remaining on hand at year end by an absorption ratio consisting of their additional section 263A costs incurred during the taxable year over their section 471 costs incurred during the taxable year.

The temporary regulations limit the availability of the simplified production method to two types of property: stock in trade of the taxpayer properly includible in inventory; and non-inventory property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. The final regulations follow Notice 88–86 and expand the categories of produced property eligible for the simplified production method to include: self-constructed assets substantially identical in nature to, and produced in the same manner as, inventory property or other property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business; and self-constructed assets produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's production activities.

A number of commentators requested that the simplified production method in the temporary regulations be revised to reduce the amount of section 263A costs allocable to raw materials inventories. These commentators suggested that allocations based on this method may result in an excessive amount of section 263A costs being allocated to raw materials inventories. They argue that this result occurs because the simplified production method does not take into account the fact that fewer indirect costs are incurred with respect to raw materials normally held only a short period of time than are incurred with respect to other items of inventory held longer. For example, a taxpayer that buys additional raw materials on the last day of the year would be required to allocate significantly more additional section 263A costs (such as storage, handling, and carrying costs) to those materials under the simplified production method than it would under a facts-and-circumstances allocation method.

The final regulations do not adopt these recommendations. The Service and the Treasury believe that the simplified production method formula properly reflects the costs of raw materials that are purchased on the last day of the year. First, the taxpayer will have likely incurred purchasing costs and handling costs in obtaining these materials, which should be included in the inventoriable cost of these materials. Second, incorporating these suggestions in the final regulations would reduce the simplicity that the simplified production method is intended to provide. If the simplified production method produces inappropriate results, a taxpayer may request to change its method of accounting to a facts-and-circumstances allocation method.

Commentators requested clarification on determining section 471 costs. They questioned whether a change in financial reporting practices with respect to category iii costs (described in the full absorption regulations of § 1.471–11(c)(2)) for years after the effective date of section 263A would automatically change the costs included in section 471 costs for purposes of the simplified production method. The final regulations clarify that in order for a taxpayer to change its costs included in section 471 costs, the taxpayer must first change its method of accounting used in determining section 471 costs for federal income tax purposes. Therefore, a change in the treatment of section 471

costs for financial reporting purposes does not automatically result in a change in the treatment of section 471 costs for federal income tax purposes.

Finally, commentators suggested that the final regulations provide an exception for producers similar to the gross receipts exception available to resellers. Although the final regulations do not adopt this suggestion, they do provide, however, a de minimis exception for producers electing the simplified production method. Under this exception, if a producer using the simplified production method has indirect costs of $200,000 or less in a taxable year (excluding certain indirect costs specifically not required to be capitalized), the producer is deemed to have no additional section 263A costs in that year.

B. Simplified Resale Method

Prior to issuance of the final regulations, resellers were permitted to choose from three simplified allocation methods to determine the aggregate amount of additional section 263A costs allocable to ending inventory. The final regulations provide only one simplified allocation method for resellers, the simplified resale method, which is the principal simplified allocation method being used by resellers. The simplified resale method is essentially the same as the modified resale method set forth in Notice 89–67. The final regulations permit resellers to modify the formulas provided under the simplified resale method to yield allocations equivalent to the other two simplified allocation methods not specifically retained in the final regulations.

Generally, the simplified resale method may not be elected by taxpayers with production activities. However, the final regulations permit certain taxpayers engaged in both resale and production activities to elect the simplified resale method in two situations. First, the final regulations generally permit a reseller with personal property produced under contract to elect the simplified resale method. Second, the final regulations permit a taxpayer with de minimis production activities to elect the simplified resale method. For this purpose, a reseller's production activities are presumed de minimis if: (1) The gross receipts from the sale of property produced by the reseller are less than 10 percent of the total gross receipts of the trade or business; and (2) the labor costs allocable to the production activities of the trade or business are less than 10 percent of the total labor costs of the trade or business. If the simplified resale method is elected, it must be used to capitalize all costs allocable to eligible property produced and property acquired for resale.

C. Simplified Service Cost Method

The temporary regulations provide a simplified service cost method producers may use to allocate mixed service costs among their various business activities. Under this method, the portion of a taxpayer's mixed service costs required to be capitalized is determined by multiplying the taxpayer's total mixed service costs incurred during the taxable year by the ratio of its total production costs (excluding mixed service costs and interest) incurred during the taxable year to its total costs incurred during the taxable year (excluding mixed service costs, interest, and taxes assessed based on income). Resellers may use a similar simplified service cost method provided they elect the simplified resale method. Commentators suggested that all resellers, not just resellers using the simplified resale method, be permitted to use the simplified service cost method. In response to this concern, the final regulations provide one simplified service cost method that may be used by all resellers and producers, regardless of whether they elect another simplified method.

In addition, commentators suggested that the allocation ratio under the simplified service cost method in the temporary regulations results in the over-capitalization of mixed service costs because the cost of raw materials is included in both the numerator and denominator of the ratio. They also suggested that producers be permitted to use a labor-based allocation ratio similar to the one in the temporary regulations provided for resellers that elect the simplified resale method. As announced in Notice 88–86, the final regulations permit producers to elect to use either a labor-based allocation ratio or the production cost allocation ratio described above.

Commentators also requested that the categories of produced property eligible for the simplified service cost method be expanded. Consistent with Notice 88–86, the final regulations provide that the simplified service cost method is also available for: self-constructed assets substantially identical in nature to, and produced in the same manner as, inventory property or other property held primarily for sale to customers in the ordinary course of the taxpayer's business; and self-constructed assets produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's production activities.

In determining total mixed service costs under the simplified service cost method, the temporary regulations require that a taxpayer include the total costs of any department or function performing mixed service activities. For example, a reseller is not permitted to segregate non-resale activities performed in a mixed service department from the department's other costs. Commentators requested that this restriction be removed in the final regulations. The Service and the Treasury, however, believe this restriction is appropriate to prevent distortions in the allocation of mixed service costs to production and resale activities.

Simplification for Both Producers and Resellers

A. Historic Absorption Ratio Election

Commentators expressed concern that computations under the simplified production method and the simplified resale method are costly and time consuming because a taxpayer must determine its absorption ratio annually. In response, the final regulations permit producers and resellers to elect to use a historic absorption ratio in conjunction with the simplified production method or the simplified resale method.

In general, if a taxpayer elects to use a historic absorption ratio, the additional section 263A costs allocable to a taxpayer's ending inventory are computed by multiplying the taxpayer's historic absorption ratio by its section 471 costs remaining in ending inventory. A taxpayer's historic absorption ratio is generally based on the percentage of additional section 263A costs capitalized by the taxpayer during a three-year test period. Taxpayers are required to test the accuracy of the historic absorption ratio by computing an actual absorption ratio once every six years. If the test of the ratio indicates a more than one-half of one percentage point difference (plus or minus) from the taxpayer's actual absorption ratio, the taxpayer must redetermine its historic absorption ratio using an updated test period.

For the following reasons, the historic absorption ratio is only available to taxpayers that use one of the simplified methods. First, it is difficult for taxpayers that do not use a simplified production method or simplified resale method to identify additional section 263A costs. Second, the historic absorption ratio results in certain complexities for dollar-value LIFO taxpayers that must allocate additional section 263A costs to specific items of property.

Taxpayers will be permitted to elect a historic absorption ratio in their first, second, or third taxable year beginning after December 31, 1993.

B. Taxpayers Not Electing Simplified Methods

Taxpayers that do not use a simplified method must capitalize their costs under section 263A based on the facts and circumstances of the particular taxpayer's operations, with the same degree of specificity as required of manufacturers capitalizing costs prior to the enactment of section 263A.

C. Trade or Business Requirement

A number of commentators suggested that taxpayers should be permitted to apply the simplified methods to more discrete business units than a separate and distinct trade or business (e.g., a product line). The final regulations have not adopted this suggestion. Applying the simplified methods to business units smaller than a trade or business is not consistent with the legislative history, which intended that the simplified methods would be applied separately to each trade or business of a taxpayer. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–306 (1986), 1986–3 C.B. (Vol. 4) 306. Also, applying the simplified methods to business units smaller than a trade or business is contrary to the goals of administrative convenience and simplicity for both taxpayers and the Service.

D. Add-on Percentage Method

Some commentators suggested that the final regulations permit producers and resellers to capitalize additional section 263A costs based on average absorption percentages experienced within various industries. The Service generally believes that, for small taxpayers for which the costs of compliance with section 263A might outweigh the benefits to the government of compliance, the use of industry-specific safe harbor absorption percentages would be a reasonable simplifying assumption under the Secretary's section 263A(i) authority. The Service has, however, encountered difficulty in collecting the necessary industry-specific data (e.g., by Standard Industry Code grouping) to facilitate the development of safe harbor absorption percentages. Thus, the final regulations do not permit the use of an add-on percentage method as requested by commentators.

The regulations do provide, however, a significant simplification through the availability of the historic ratio election and the rule under which producers with de minimis indirect costs and using the simplified production method are deemed to have no additional capitalizable costs under section 263A. In addition, the Service is willing to work with interested taxpayers toward the development of industry-specific safe harbor add-on percentages. In this regard, the final regulations provide that taxpayers may elect any additional simplified methods prescribed by the Commissioner.

Accounting Method Changes

Taxpayers that have previously adopted methods of accounting under section 263A in accordance with guidance published in the temporary regulations and Notices may be required to change their methods of accounting under section 263A to comply with provisions in the final regulations. These taxpayers may also desire to change their methods of accounting to avail themselves of certain simplified methods and elections under the final regulations.

The Service intends to issue a revenue procedure prescribing the procedures, terms, and conditions for effecting method changes arising due to the promulgation of these final regulations. The revenue procedure will generally permit taxpayers to make expedited method changes by attaching a Form 3115 to their tax returns for the year of change. It is anticipated that the revenue procedure will require taxpayers to revalue their inventories as of the effective date of the final regulations to reflect differences between the methods required under the final regulations and those methods used by taxpayers prior to promulgation of the final regulations. The principles of § 1.263A–1T(e) of the temporary regulations will be required for revaluing inventories under the revenue procedure. The Service is requesting comments from taxpayers for a 90-day period after the publication of these final regulations in the **Federal Register** regarding the approach for implementing method changes required under the final regulations.

The Service generally does not intend to permit taxpayers to change their adopted allocation methods under the forthcoming expedited change procedures. It is anticipated that the procedures will generally permit taxpayers to change only those methods necessary to bring them into compliance with the final regulations. The Service does plan, however, to provide a listing in the revenue procedure of certain elective methods that may be changed under the expedited change procedures. For example, the Service plans to permit a taxpayer that adopted a facts-and-circumstances allocation method to change to the simplified production method if that method is now more desirable to the taxpayer by reason of the historic absorption ratio election or the de minimis indirect costs exception. During the 90-day period after the publication of these regulations in the **Federal Register**, taxpayers are invited to comment on elective method changes that should be permitted under the expedited consent procedures.

Special Analysis

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Ellen McElroy of the Income Tax and Accounting Division, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury, however, assisted in developing these regulations on matters of both substance and style.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding new entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.263A–1 also issued under 26 U.S.C. 263A. * * *

Section 1.263A–2 also issued under 26 U.S.C. 263A.

Section 1.263A–3 also issued under 26 U.S.C. 263A.

Section 1.263A–4 also issued under 26 U.S.C. 263A.

Section 1.263A–5 also issued under 26 U.S.C. 263A.

Section 1.263A–6 also issued under 26 U.S.C. 263A.

Section 1.263A–7 also issued under 26 U.S.C. 263A. * * *

Section 1.471–4 also issued under 26 U.S.C. 263A.

Section 1.471–5 also issued under 26 U.S.C. 263A. * * *

Par. 2. Section 1.56(g)-1 is amended by revising the first sentence of the example in paragraph (a)(5)(ii)(B) to read as follows:

§ 1.56(g)–1 Adjusted current earnings.

* * * * *

(a) * * *

(5) * * *

(ii) * * *

(B) Pursuant to section 263A and § 1.263A–1(e)(3)(ii)(I), N must capitalize the depreciation allowed for the year for the new manufacturing equipment in the ending inventory of golf clubs. * * *

* * * * *

Par. 3. Section 1.263(a)–1 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 1.263(a)–1 Capital expenditures; in general.

* * * * *

(b) * * * See section 263A and the regulations thereunder for cost capitalization rules that apply to amounts referred to in paragraph (a) of this section with respect to the production of real and tangible personal property (as defined in § 1.263A–2(a)(2)), including films, sound recordings, video tapes, books, or similar properties.

* * * * *

Par. 4. Section 1.263A–0 is added to read as follows:

§ 1.263A–0 Outline of regulations under section 263A.

This section lists the paragraphs in §§ 1.263A–1, 1.263A–2, and 1.263A–3.

§ 1.263A–1 Uniform Capitalization of Costs.

(a) Introduction.
- (1) In general.
- (2) Effective dates.
- (3) General scope.
- (i) Property to which section 263A applies.
- (ii) Property produced.
- (iii) Property acquired for resale.
- (iv) Inventories valued at market.
- (v) Property produced in a farming business.
- (vi) Creative property.
- (vii) Property produced or property acquired for resale by foreign persons.

(b) Exceptions.
- (1) Small resellers.
- (2) Long-term contracts.
- (3) Costs incurred in certain farming businesses.
- (4) Costs incurred in raising, harvesting, or growing timber.
- (5) Qualified creative expenses.
- (6) Certain not-for-profit activities.
- (7) Intangible drilling and development costs.
- (8) Natural gas acquired for resale.
- (i) Cushion gas.
- (ii) Emergency gas.
- (9) Research and experimental expenditures.
- (10) Certain property that is substantially constructed.
- (11) Certain property provided incident to services.
- (i) In general.
- (ii) Definition of services.
- (iii) De minimis property provided incident to services.
- (12) De minimis rule for certain producers with total indirect costs of $200,000 or less.
- (13) Exception for the origination of loans.

(c) General operation of section 263A.
- (1) Allocations.
- (2) Otherwise deductible.
- (3) Capitalize.
- (4) Recovery of capitalized costs.

(d) Definitions.
- (1) Self-constructed assets.
- (2) Section 471 costs.
- (i) In general.
- (ii) New taxpayers.
- (iii) Method changes.
- (3) Additional section 263A costs.
- (4) Section 263A costs.

(e) Types of costs subject to capitalization.
- (1) In general.
- (2) Direct costs.
- (i) Producers.
- (A) Direct material costs.
- (B) Direct labor costs.
- (ii) Resellers.
- (3) Indirect costs.
- (i) In general.
- (ii) Examples of indirect costs required to be capitalized.
- (A) Indirect labor costs.
- (B) Officers' compensation.
- (C) Pension and other related costs.
- (D) Employee benefit expenses.
- (E) Indirect material costs.
- (F) Purchasing costs.
- (G) Handling costs.
- (H) Storage costs.
- (I) Cost recovery.
- (J) Depletion.
- (K) Rent.
- (L) Taxes.
- (M) Insurance.
- (N) Utilities.
- (O) Repairs and maintenance.
- (P) Engineering and design costs.
- (Q) Spoilage.
- (R) Tools and equipment.
- (S) Quality control.
- (T) Bidding costs
- (U) Licensing and franchise costs.
- (V) Interest.
- (W) Capitalizable service costs.
- (iii) Indirect costs not capitalized.
- (A) Selling and distribution costs.
- (B) Research and experimental expenditures.
- (C) Section 179 costs.
- (D) Section 165 losses.
- (E) Cost recovery allowances on temporarily idle equipment and facilities.
- (1) In general.
- (2) Examples.
- (F) Taxes assessed on the basis of income.
- (G) Strike expenses.
- (H) Warranty and product liability costs.
- (I) On-site storage costs.
- (J) Unsuccessful bidding expenses.
- (K) Deductible service costs.
- (4) Service costs.
- (i) Introduction.
- (A) Definition of service costs.
- (B) Definition of service departments.
- (ii) Various service cost categories.
- (A) Capitalizable service costs.
- (B) Deductible service costs.
- (C) Mixed service costs.
- (iii) Examples of capitalizable service costs.
- (iv) Examples of deductible service costs.

(f) Cost allocation methods.
- (1) Introduction.
- (2) Specific identification method.
- (3) Burden rate and standard cost methods.
- (i) Burden rate method.
- (A) In general.
- (B) Development of burden rates.
- (C) Operation of the burden rate method.
- (ii) Standard cost method.
- (A) In general.
- (B) Treatment of variances.
- (4) Reasonable allocation methods.

(g) Allocating categories of costs.
- (1) Direct materials.
- (2) Direct labor.
- (3) Indirect costs.
- (4) Service costs.
- (i) In general.
- (ii) De minimis rule.
- (iii) Methods for allocating mixed service costs.
- (A) Direct reallocation method.
- (B) Step-allocation method.
- (C) Examples.
- (iv) Illustrations of mixed service cost allocations using reasonable factors or relationships.
- (A) Security services.
- (B) Legal services.
- (C) Centralized payroll services.
- (D) Centralized data processing services.
- (E) Engineering and design services.
- (F) Safety engineering services.
- (v) Accounting method change.

(h) Simplified service cost method.
- (1) Introduction.
- (2) Eligible property.
- (i) In general.
- (A) Inventory property.
- (B) Non-inventory property held for sale.
- (C) Certain self-constructed assets.
- (D) Self-constructed assets produced on a repetitive basis
- (ii) Election to exclude self-constructed assets.
- (3) General allocation formula.
- (4) Labor-based allocation ratio.
- (5) Production cost allocation ratio.
- (6) Definition of total mixed service costs.
- (7) Costs allocable to more than one business.
- (8) De minimis rule.
- (9) Separate election.

(i) [Reserved]

(j) Special rules.
- (1) Costs provided by a related person.
- (i) In general.
- (ii) Exceptions.
- (2) Optional capitalization of period costs.

(i) In general.
(ii) Period costs eligible for capitalization.
(3) Trade or business application.
(4) Transfers with a principal purpose of tax avoidance. [Reserved]

§ 1.263A–2 Rules Relating to Property Produced by the Taxpayer

(a) In general.
(1) Produce.
(i) In general.
(ii) Ownership.
(A) General rule.
(B) Property produced for the taxpayer under a contract.
(*1*) In general.
(*2*) Definition of contract. [Reserved]
(C) Home construction contracts.
(2) Tangible personal property.
(i) General rule.
(ii) Intellectual or creative property.
(A) Intellectual or creative property that is tangible personal property.
(*1*) Books.
(*2*) Sound recordings.
(B) Intellectual or creative property that is not tangible personal property.
(*1*) Evidences of value.
(*2*) Property provided incident to services.
(3) Costs required to be capitalized by producers.
(i) In general.
(ii) Pre-production costs.
(iii) Post-production costs.
(4) Practical capacity concept.
(5) Taxpayers required to capitalize costs under this section.
(b) Simplified production method.
(1) Introduction.
(2) Eligible property.
(i) In general.
(A) Inventory property.
(B) Non-inventory property held for sale.
(C) Certain self-constructed assets.
(D) Self-constructed assets produced on a repetitive basis.
(ii) Election to exclude self-constructed assets.
(3) Simplified production method without historic absorption ratio election.
(i) General allocation formula.
(ii) Definitions.
(A) Absorption ratio.
(*1*) Additional section 263A costs incurred during the taxable year.
(*2*) Section 471 costs incurred during the taxable year.
(B) Section 471 costs remaining on hand at year end.
(iii) LIFO taxpayers electing the simplified production method.
(A) In general.
(B) LIFO increment.
(C) LIFO decrement.
(iv) De minimis rule for producers with total indirect costs of $200,000 or less.
(A) In general.
(B) Related party and aggregation rules.
(v) Examples.
(4) Simplified production method with historic absorption ratio election.
(i) In general.
(ii) Operating rules and definitions.
(A) Historic absorption ratio.
(B) Test period.
(*1*) In general.
(*2*) Updated test period.
(C) Qualifying period.
(*1*) In general.
(*2*) Extension of qualifying period.
(iii) Method of accounting.
(A) Adoption and use.
(B) Revocation of election.
(iv) Reporting and recordkeeping requirements.
(A) Reporting.
(B) Recordkeeping.
(v) Transition rules.
(vi) Example.
(c) Additional simplified methods for producers.
(d) Cross reference.

§ 1.263A–3 Rules Relating to Property Acquired for Resale

(a) Capitalization rules for property acquired for resale.
(1) In general.
(2) Resellers with production activities.
(i) In general.
(ii) Exception for small resellers.
(iii) De minimis production activities.
(A) In general.
(B) Example.
(3) Resellers with property produced under a contract.
(4) Use of the simplified resale method.
(i) In general.
(ii) Resellers with de minimis production activities.
(iii) Resellers with property produced under a contract.
(iv) Application of simplified resale method.
(b) Gross receipts exception for small resellers.
(1) In general.
(i) Test period for new taxpayers.
(ii) Treatment of short taxable year.
(2) Definition of gross receipts.
(i) In general.
(ii) Amounts excluded.
(3) Aggregation of gross receipts.
(i) In general.
(ii) Single employer defined.
(iii) Gross receipts of a single employer.
(iv) Examples.
(c) Purchasing, handling, and storage costs.
(1) In general.
(2) Costs attributable to purchasing, handling, and storage.
(3) Purchasing costs.
(i) In general.
(ii) Determination of whether personnel are engaged in purchasing activities.
(A) ⅓–⅔ rule for allocating labor costs.
(B) Example.
(4) Handling costs.
(i) In general.
(ii) Processing costs.
(iii) Assembling costs.
(iv) Repackaging costs.
(v) Transportation costs.
(vi) Costs not considered handling costs.
(A) Distribution costs. [Reserved]
(B) Delivery of custom-ordered items. [Reserved]
(C) Repackaging after sale occurs. [Reserved]
(5) Storage costs.
(i) In general.
(ii) Definitions.
(A) On-site storage facility.
(B) Retail sales facility.
(C) An integral part of a retail sales facility.
(D) On-site sales.
(E) Retail customer.
(*1*) In general.
(*2*) Certain non-retail customers treated as retail customers.
(F) Off-site storage facility.
(G) Dual-function storage facility.
(iii) Treatment of storage costs incurred at a dual-function storage facility.
(A) In general.
(B) Dual-function storage facility allocation ratio.
(*1*) In general.
(*2*) Illustration of ratio allocation.
(*3*) Appropriate adjustments for other uses of a dual-function storage facility.
(C) De minimis 90–10 rule for dual-function storage facilities.
(iv) Costs not attributable to an off-site storage facility.
(v) Examples.
(d) Simplified resale method.
(1) Introduction.
(2) Eligible property.
(3) Simplified resale method without historic absorption ratio election.
(i) General allocation formula.
(A) In general.
(B) Effect of allocation.
(C) Definitions.
(*1*) Combined absorption ratio.
(*2*) Section 471 costs remaining on hand at year end.
(D) Storage and handling costs absorption ratio.
(E) Purchasing costs absorption ratio.
(F) Allocable mixed service costs.
(ii) LIFO taxpayers electing simplified resale method.
(A) In general.
(B) LIFO increment.
(C) LIFO decrement.
(iii) Permissible variations of the simplified resale method.
(iv) Examples.
(4) Simplified resale method with historic absorption ratio election.
(i) In general.
(ii) Operating rules and definitions.
(A) Historic absorption ratio.
(B) Test period.
(*1*) In general.
(*2*) Updated test period.
(C) Qualifying period.
(*1*) In general.
(*2*) Extension of qualifying period.
(iii) Method of accounting.
(A) Adoption and use.
(B) Revocation of election.
(iv) Reporting and recordkeeping requirements.
(A) Reporting.
(B) Recordkeeping.
(v) Transition rules.
(vi) Example.
(5) Additional simplified methods for resellers.
(e) Cross reference.

Par. 5. Section 1.263A–1 is added to read as follows:

§ 1.263A–1 Uniform capitalization of costs.

(a) *Introduction*—(1) *In general.* The regulations under §§ 1.263A–1 through 1.263A–6 provide guidance to taxpayers that are required to capitalize certain costs under section 263A. These regulations generally apply to all costs required to be capitalized under section 263A except for interest that must be capitalized under section 263A(f) and the regulations thereunder. Statutory or regulatory exceptions may provide that section 263A does not apply to certain activities or costs; however, those activities or costs may nevertheless be subject to capitalization requirements under other provisions of the Internal Revenue Code and regulations.

(2) *Effective dates.* (i) In general, this section and §§ 1.263A–2 and 1.263A–3 apply to costs incurred in taxable years beginning after December 31, 1993. In the case of property that is inventory in the hands of the taxpayer, however, these sections are effective for taxable years beginning after December 31, 1993. Changes in methods of accounting necessary as a result of the rules in this section and §§ 1.263A–2 and 1.263A–3 must be made under terms and conditions prescribed by the Commissioner. Under these terms and conditions, the principles of § 1.263A–1T(e) generally must be applied in revaluing inventory property.

(ii) For taxable years beginning before January 1, 1994, taxpayers must take reasonable positions on their federal income tax returns when applying section 263A. For purposes of this paragraph (a)(2)(iii), a reasonable position is a position consistent with the temporary regulations, revenue rulings, revenue procedures, notices, and announcements concerning section 263A applicable in taxable years beginning before January 1, 1994. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(3) *General scope*—(i) *Property to which section 263A applies.* Taxpayers subject to section 263A must capitalize all direct costs and certain indirect costs properly allocable to—

(A) Real property and tangible personal property produced by the taxpayer; and

(B) Real property and personal property described in section 1221(1), which is acquired by the taxpayer for resale.

(ii) *Property produced.* Taxpayers that produce real property and tangible personal property (producers) must capitalize all the direct costs of producing the property and the property's properly allocable share of indirect costs (described in paragraphs (e)(2)(i) and (3) of this section), regardless of whether the property is sold or used in the taxpayer's trade or business. See § 1.263A–2 for rules relating to producers.

(iii) *Property acquired for resale.* Retailers, wholesalers, and other taxpayers that acquire property described in section 1221(1) for resale (resellers) must capitalize the direct costs of acquiring the property and the property's properly allocable share of indirect costs (described in paragraphs (e)(2)(ii) and (3) of this section). See § 1.263A–3 for rules relating to resellers. See also section 263A(b)(2)(B), which excepts from section 263A personal property acquired for resale by a small reseller.

(iv) *Inventories valued at market.* Section 263A does not apply to inventories valued at market under either the market method or the lower of cost or market method if the market valuation used by the taxpayer generally equals the property's fair market value. For purposes of this paragraph (a)(3)(iv), the term fair market value means the price at which the taxpayer sells its inventory to its customers (e.g., as in the market value definition provided in § 1.471–4(b)) less, if applicable, the direct cost of disposing of the inventory. However, section 263A does apply in determining the market value of any inventory for which market is determined with reference to replacement cost or reproduction cost. See §§ 1.471–4 and 1.471–5.

(v) *Property produced in a farming business.* Section 263A generally requires taxpayers engaged in a farming business to capitalize certain costs. See section 263A(d) and § 1.263A–1T(c) for rules relating to taxpayers engaged in a farming business.

(vi) *Creative property.* Section 263A generally requires taxpayers engaged in the production and resale of creative property to capitalize certain costs.

(vii) *Property produced or property acquired for resale by foreign persons.* Section 263A generally applies to foreign persons.

(b) *Exceptions*—(1) *Small resellers.* See section 263A(b)(2)(B) for the $10,000,000 gross receipts exception for small resellers of personal property. See § 1.263A–3(b) for rules relating to this exception. See also the exception for small resellers with de minimis production activities in § 1.263A–3(a)(2)(ii) and the exception for small resellers that have property produced under contract in § 1.263A–3(a)(3).

(2) *Long-term contracts.* Except for certain home construction contracts described in section 460(e)(1), section 263A does not apply to any property produced by the taxpayer pursuant to a long-term contract as defined in section 460(f), regardless of whether the taxpayer uses an inventory method to account for such production.

(3) *Costs incurred in certain farming businesses.* See section 263A(d) for an exception for costs paid or incurred in certain farming businesses. See § 1.263A–1T(c) for specific rules relating to taxpayers engaged in a farming business.

(4) *Costs incurred in raising, harvesting, or growing timber.* See section 263A(c)(5) for an exception for costs paid or incurred in raising, harvesting, or growing timber and certain ornamental trees. See § 1.263A–1T(c), however, for rules relating to taxpayers that produce certain trees to which section 263A applies.

(5) *Qualified creative expenses.* See section 263A(h) for an exception for qualified creative expenses paid or incurred by certain free-lance authors, photographers, and artists.

(6) *Certain not-for-profit activities.* See section 263A(c)(1) for an exception for property produced by a taxpayer for use by the taxpayer other than in a trade or business or an activity conducted for profit. This exception does not apply, however, to property produced by an exempt organization in connection with its unrelated trade or business activities.

(7) *Intangible drilling and development costs.* See section 263A(c)(3) for an exception for intangible drilling and development costs. Additionally, section 263A does not apply to any amount allowable as a deduction under section 59(e) with respect to qualified expenditures under sections 263(c), 616(a), or 617(a).

(8) *Natural gas acquired for resale.* Under this paragraph (b)(8), section 263A does not apply to any costs incurred by a taxpayer relating to natural gas acquired for resale to the extent such costs would otherwise be allocable to cushion gas.

(i) *Cushion gas.* Cushion gas is the portion of gas stored in an underground storage facility or reservoir that is required to maintain the level of pressure necessary for operation of the facility. However, section 263A applies to costs incurred by a taxpayer relating to natural gas acquired for resale to the extent such costs are properly allocable to emergency gas.

(ii) *Emergency gas.* Emergency gas is natural gas stored in an underground storage facility or reservoir for use during periods of unusually heavy customer demand.

(9) *Research and experimental expenditures.* See section 263A(c)(2) for an exception for any research and experimental expenditure allowable as a deduction under section 174 or the

regulations thereunder. Additionally, section 263A does not apply to any amount allowable as a deduction under section 59(e) with respect to qualified expenditures under section 174.

(10) *Certain property that is substantially constructed.* Section 263A does not apply to any property produced by a taxpayer for use in its trade or business if substantial construction occurred before March 1, 1986. See § 1.263A–1T(a)(6)(v) for a definition of substantial construction.

(11) *Certain property provided incident to services*—(i) *In general.* Under this paragraph (b)(11), section 263A does not apply to property that is provided to a client (or customer) incident to the provision of services by the taxpayer if the property provided to the client is—

(A) De minimis in amount; and

(B) Not inventory in the hands of the service provider.

(ii) *Definition of services.* For purposes of this paragraph (b)(11), services is defined with reference to its ordinary and accepted meaning under federal income tax principles. In determining whether a taxpayer is a bona-fide service provider under this paragraph (b)(11), the nature of the taxpayer's trade or business and the facts and circumstances surrounding the taxpayer's trade or business activities must be considered. Examples of taxpayers qualifying as service providers under this paragraph include taxpayers performing services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting.

(iii) *De minimis property provided incident to services.* In determining whether property provided to a client by a service provider is de minimis in amount, all facts and circumstances, such as the nature of the taxpayer's trade or business and the volume of its service activities in the trade or business, must be considered. A significant factor in making this determination is the relationship between the acquisition or direct materials costs of the property that is provided to clients and the price that the taxpayer charges its clients for its services and the property. For purposes of this paragraph (b)(11), if the acquisition or direct materials cost of the property provided to a client incident to the services is less than or equal to five percent of the price charged to the client for the services and property, the property is de minimis. If the acquisition or direct materials cost of the property exceeds five percent of the price charged for the services and property, the property may be de minimis if additional facts and circumstances so indicate.

(12) *De minimis rule for certain producers with total indirect costs of $200,000 or less.* See § 1.263A–2(b)(3)(iv) for a de minimis rule that treats producers with total indirect costs of $200,000 or less as having no additional section 263A costs (as defined in paragraph (d)(3) of this section) for purposes of the simplified production method.

(13) *Exception for the origination of loans.* For purposes of section 263A(b)(2)(A), the origination of loans is not considered the acquisition of intangible property for resale. (But section 263A(b)(2)(A) does include the acquisition by a taxpayer of pre-existing loans from other persons for resale.)

(c) *General operation of section 263A*—(1) *Allocations.* Under section 263A, taxpayers must capitalize their direct costs and a properly allocable share of their indirect costs to property produced or property acquired for resale. In order to determine these capitalizable costs, taxpayers must allocate or apportion costs to various activities, including production or resale activities. After section 263A costs are allocated to the appropriate production or resale activities, these costs are generally allocated to the items of property produced or property acquired for resale during the taxable year and capitalized to the items that remain on hand at the end of the taxable year. See however, the simplified production method and the simplified resale method in §§ 1.263A–2(b) and 1.263A–3(d).

(2) *Otherwise deductible.* (i) Any cost which (but for section 263A and the regulations thereunder) may not be taken into account in computing taxable income for any taxable year is not treated as a cost properly allocable to property produced or acquired for resale under section 263A and the regulations thereunder. Thus, for example, if a business meal deduction is limited by section 274(n) to 80 percent of the cost of the meal, the amount properly allocable to property produced or acquired for resale under section 263A is also limited to 80 percent of the cost of the meal.

(ii) The amount of any cost required to be capitalized under section 263A may not be included in inventory or charged to capital accounts or basis any earlier than the taxable year during which the amount is incurred within the meaning of § 1.446–1(c)(1)(ii).

(3) *Capitalize.* Capitalize means, in the case of property that is inventory in the hands of a taxpayer, to include in inventory costs and, in the case of other property, to charge to a capital account or basis.

(4) *Recovery of capitalized costs.* Costs that are capitalized under section 263A are recovered through depreciation, amortization, cost of goods sold, or by an adjustment to basis at the time the property is used, sold, placed in service, or otherwise disposed of by the taxpayer. Cost recovery is determined by the applicable Internal Revenue Code and regulation provisions relating to the use, sale, or disposition of property.

(d) *Definitions*—(1) *Self-constructed assets.* Self-constructed assets are assets produced by a taxpayer for use by the taxpayer in its trade or business. Self-constructed assets are subject to section 263A.

(2) *Section 471 costs*—(i) *In general.* Except as otherwise provided in paragraphs (d)(2)(ii) and (iii) of this section, for purposes of the regulations under section 263A, a taxpayer's section 471 costs are the costs, other than interest, capitalized under its method of accounting immediately prior to the effective date of section 263A. Thus, although section 471 applies only to inventories, section 471 costs include any non-inventory costs, other than interest, capitalized or included in acquisition or production costs under the taxpayer's method of accounting immediately prior to the effective date of section 263A.

(ii) *New taxpayers.* In the case of a new taxpayer, section 471 costs are those acquisition or production costs, other than interest, that would have been required to be capitalized by the taxpayer if the taxpayer had been in existence immediately prior to the effective date of section 263A.

(iii) *Method changes.* If a taxpayer included a cost described in § 1.471–11(c)(2)(iii) in its inventoriable costs immediately prior to the effective date of section 263A, that cost is included in the taxpayer's section 471 costs under paragraph (d)(2)(i) of this section. Except as provided in the following sentence, a change in the financial reporting practices of a taxpayer for costs described in § 1.471–11(c)(2)(iii) subsequent to the effective date of section 263A does not affect the classification of these costs as section 471 costs. A taxpayer may change its established methods of accounting used in determining section 471 costs only with the consent of the Commissioner as required under section 446(e) and the regulations thereunder.

(3) *Additional section 263A costs.* Additional section 263A costs are defined as the costs, other than interest, that were not capitalized under the

taxpayer's method of accounting immediately prior to the effective date of section 263A (adjusted as appropriate for any changes in methods of accounting for section 471 costs under paragraph (d)(2)(iii) of this section), but that are required to be capitalized under section 263A. For new taxpayers, additional section 263A costs are defined as the costs, other than interest, that the taxpayer must capitalize under section 263A, but which the taxpayer would not have been required to capitalize if the taxpayer had been in existence prior to the effective date of section 263A.

(4) *Section 263A costs.* Section 263A costs are defined as the costs that a taxpayer must capitalize under section 263A. Thus, section 263A costs are the sum of a taxpayer's section 471 costs, its additional section 263A costs, and interest capitalizable under section 263A(f).

(e) *Types of costs subject to capitalization*—(1) *In general.* Taxpayers subject to section 263A must capitalize all direct costs and certain indirect costs properly allocable to property produced or property acquired for resale. This paragraph (e) describes the types of costs subject to section 263A.

(2) *Direct costs*—(i) *Producers.* Producers must capitalize direct material costs and direct labor costs.

(A) *Direct material costs* include the costs of those materials that become an integral part of specific property produced and those materials that are consumed in the ordinary course of production and that can be identified or associated with particular units or groups of units of property produced.

(B) *Direct labor costs* include the costs of labor that can be identified or associated with particular units or groups of units of specific property produced. For this purpose, labor encompasses full-time and part-time employees, as well as contract employees and independent contractors. Direct labor costs include all elements of compensation other than employee benefit costs described in paragraph (e)(3)(ii)(D) of this section. Elements of direct labor costs include basic compensation, overtime pay, vacation pay, holiday pay, sick leave pay (other than payments pursuant to a wage continuation plan under section 105(d) as it existed prior to its repeal in 1983), shift differential, payroll taxes, and payments to a supplemental unemployment benefit plan.

(ii) *Resellers.* Resellers must capitalize the acquisition costs of property acquired for resale. In the case of inventory, the acquisition cost is the cost described in § 1.471–3(b).

(3) *Indirect costs*—(i) *In general.* Indirect costs are defined as all costs other than direct material costs and direct labor costs (in the case of property produced) or acquisition costs (in the case of property acquired for resale). Taxpayers subject to section 263A must capitalize all indirect costs properly allocable to property produced or property acquired for resale. Indirect costs are properly allocable to property produced or property acquired for resale when the costs directly benefit or are incurred by reason of the performance of production or resale activities. Indirect costs may be allocable to both production and resale activities, as well as to other activities that are not subject to section 263A. Taxpayers subject to section 263A must make a reasonable allocation of indirect costs between production, resale, and other activities.

(ii) *Examples of indirect costs required to be capitalized.* The following are examples of indirect costs that must be capitalized to the extent they are properly allocable to property produced or property acquired for resale:

(A) *Indirect labor costs.* Indirect labor costs include all labor costs (including the elements of labor costs set forth in paragraph (e)(2)(i) of this section) that cannot be directly identified or associated with particular units or groups of units of specific property produced or property acquired for resale (e.g., factory labor that is not direct labor). As in the case of direct labor, indirect labor encompasses full-time and part-time employees, as well as contract employees and independent contractors.

(B) *Officers' compensation.* Officers' compensation includes compensation paid to officers of the taxpayer.

(C) *Pension and other related costs.* Pension and other related costs include contributions paid to or made under any stock bonus, pension, profit-sharing or annuity plan, or other plan deferring the receipt of compensation, whether or not the plan qualifies under section 401(a). Contributions to employee plans representing past services must be capitalized in the same manner (and in the same proportion to property currently being acquired or produced) as amounts contributed for current service.

(D) *Employee benefit expenses.* Employee benefit expenses include all other employee benefit expenses (not described in paragraph (e)(3)(ii)(C) of this section) to the extent such expenses are otherwise allowable as deductions under chapter 1 of the Internal Revenue Code. These other employee benefit expenses include: worker's compensation; amounts otherwise deductible or allowable in reducing earnings and profits under section 404A; payments pursuant to a wage continuation plan under section 105(d) as it existed prior to its repeal in 1983; amounts includible in the gross income of employees under a method or arrangement of employer contributions or compensation that has the effect of a stock bonus, pension, profit-sharing or annuity plan, or other plan deferring receipt of compensation or providing deferred benefits; premiums on life and health insurance; and miscellaneous benefits provided for employees such as safety, medical treatment, recreational and eating facilities, membership dues, etc. Employee benefit expenses do not, however, include direct labor costs described in paragraph (e)(2)(i) of this section.

(E) *Indirect material costs.* Indirect material costs include the cost of materials that are not an integral part of specific property produced and the cost of materials that are consumed in the ordinary course of performing production or resale activities that cannot be identified or associated with particular units or groups of units of property. Thus, for example, a cost described in § 1.162–3, relating to the cost of a material or supply, is an indirect material cost.

(F) *Purchasing costs.* Purchasing costs include costs attributable to purchasing activities. See § 1.263A–3(c)(3) for a further discussion of purchasing costs.

(G) *Handling costs.* Handling costs include costs attributable to processing, assembling, repackaging and transporting goods, and other similar activities. See § 1.263A–3(c)(4) for a further discussion of handling costs.

(H) *Storage costs.* Storage costs include the costs of carrying, storing, or warehousing property. See § 1.263A–3(c)(5) for a further discussion of storage costs.

(I) *Cost recovery.* Cost recovery includes depreciation, amortization, and cost recovery allowances on equipment and facilities (including depreciation or amortization of self-constructed assets or other previously produced or acquired property to which section 263A or section 263 applies).

(J) *Depletion.* Depletion includes allowances for depletion, whether or not in excess of cost. Depletion is, however, only properly allocable to property that has been sold (i.e., for purposes of determining gain or loss on the sale of the property).

(K) *Rent.* Rent includes the cost of renting or leasing equipment, facilities, or land.

(L) *Taxes.* Taxes include those taxes (other than taxes described in paragraph (e)(3)(iii)(F) of this section) that are otherwise allowable as a deduction to the extent such taxes are attributable to labor, materials, supplies, equipment, land, or facilities used in production or resale activities.

(M) *Insurance.* Insurance includes the cost of insurance on plant or facility, machinery, equipment, materials, property produced, or property acquired for resale.

(N) *Utilities.* Utilities include the cost of electricity, gas, and water.

(O) *Repairs and maintenance.* Repairs and maintenance include the cost of repairing and maintaining equipment or facilities.

(P) *Engineering and design costs.* Engineering and design costs include pre-production costs, such as costs attributable to research, experimental, engineering, and design activities (to the extent that such amounts are not research and experimental expenditures as described in section 174 and the regulations thereunder).

(Q) *Spoilage.* Spoilage includes the costs of rework labor, scrap, and spoilage.

(R) *Tools and equipment.* Tools and equipment include the costs of tools and equipment which are not otherwise capitalized.

(S) *Quality control.* Quality control includes the costs of quality control and inspection.

(T) *Bidding costs.* Bidding costs are costs incurred in the solicitation of contracts (including contracts pertaining to property acquired for resale) ultimately awarded to the taxpayer. The taxpayer must defer all bidding costs paid or incurred in the solicitation of a particular contract until the contract is awarded. If the contract is awarded to the taxpayer, the bidding costs become part of the indirect costs allocated to the subject matter of the contract. If the contract is not awarded to the taxpayer, bidding costs are deductible in the taxable year that the contract is awarded to another party, or in the taxable year that the taxpayer is notified in writing that no contract will be awarded and that the contract (or a similar or related contract) will not be rebid, or in the taxable year that the taxpayer abandons its bid or proposal, whichever occurs first. Abandoning a bid does not include modifying, supplementing, or changing the original bid or proposal. If the taxpayer is awarded only part of the bid (for example, the taxpayer submitted one bid to build each of two different types of products, and the taxpayer was awarded a contract to build only one of the two types of products), the taxpayer shall deduct the portion of the bidding costs related to the portion of the bid not awarded to the taxpayer. In the case of a bid or proposal for a multi-unit contract, all bidding costs must be included in the costs allocated to the subject matter of the contract awarded to the taxpayer to produce or acquire for resale any of such units. For example, where the taxpayer submits one bid to produce three similar turbines and the taxpayer is awarded a contract to produce only two of the three turbines, all bidding costs must be included in the cost of the two turbines. For purposes of this paragraph (e)(3)(ii)(T), a contract means—

(*1*) In the case of a specific unit of property, any agreement under which the taxpayer would produce or sell property to another party if the agreement is entered into before the taxpayer produces or acquires the specific unit of property to be delivered to the party under the agreement; and

(*2*) In the case of fungible property, any agreement to the extent that, at the time the agreement is entered into, the taxpayer has on hand an insufficient quantity of completed fungible items of such property that may be used to satisfy the agreement (plus any other production or sales agreements of the taxpayer).

(U) *Licensing and franchise costs.* Licensing and franchise costs include fees incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right associated with property produced or property acquired for resale. These costs include the otherwise deductible portion (e.g., amortization) of the initial fees incurred to obtain the license or franchise and any minimum annual payments and royalties that are incurred by a licensee or a franchisee.

(V) *Interest.* Interest includes interest on debt incurred or continued during the production period to finance the production of real property or tangible personal property to which section 263A(f) applies.

(W) *Capitalizable service costs.* Service costs that are required to be capitalized include capitalizable service costs and capitalizable mixed service costs as defined in paragraph (e)(4) of this section.

(iii) *Indirect costs not capitalized.* The following indirect costs are not required to be capitalized under section 263A:

(A) *Selling and distribution costs.* These costs are marketing, selling, advertising, and distribution costs.

(B) *Research and experimental expenditures.* Research and experimental expenditures are expenditures described in section 174 and the regulations thereunder.

(C) *Section 179 costs.* Section 179 costs are expenses for certain depreciable assets deductible at the election of the taxpayer under section 179 and the regulations thereunder.

(D) *Section 165 losses.* Section 165 losses are losses under section 165 and the regulations thereunder.

(E) *Cost recovery allowances on temporarily idle equipment and facilities*—(1) *In general.* Cost recovery allowances on temporarily idle equipment and facilities include only depreciation, amortization, and cost recovery allowances on equipment and facilities that have been placed in service but are temporarily idle. Equipment and facilities are temporarily idle when a taxpayer takes them out of service for a finite period. However, equipment and facilities are not considered temporarily idle—

(*i*) During worker breaks, non-working hours, or on regularly scheduled non-working days (such as holidays or weekends);

(*ii*) During normal interruptions in the operation of the equipment or facilities;

(*iii*) When equipment is enroute to or located at a job site; or

(*iv*) When under normal operating conditions, the equipment is used or operated only during certain shifts.

(*2*) *Examples.* The provisions of this paragraph (e)(3)(iii)(E) are illustrated by the following examples:

Example 1. Equipment operated only during certain shifts. Taxpayer A manufactures widgets. Although A's manufacturing facility operates 24 hours each day in three shifts, A only operates its stamping machine during one shift each day. Because A only operates its stamping machine during certain shifts, A's stamping machine is not considered temporarily idle during the two shifts that it is not operated.

Example 2. Facility shut down for retooling. Taxpayer B owns and operates a manufacturing facility. B closes its manufacturing facility for two weeks to retool its assembly line. B's manufacturing facility is considered temporarily idle during this two-week period.

(F) *Taxes assessed on the basis of income.* Taxes assessed on the basis of income include only state, local, and foreign income taxes, and franchise taxes that are assessed on the taxpayer based on income.

(G) *Strike expenses.* Strike expenses include only costs associated with hiring employees to replace striking personnel (but not wages of replacement personnel), costs of security, and legal fees associated with settling strikes.

(H) *Warranty and product liability costs.* Warranty costs and product liability costs are costs incurred in fulfilling product warranty obligations for products that have been sold and costs incurred for product liability insurance.

(I) *On-site storage costs.* On-site storage costs are storage and warehousing costs incurred by a taxpayer at an on-site storage facility, as defined in § 1.263A–3(c)(5)(ii)(A), with respect to property produced or property acquired for resale.

(J) *Unsuccessful bidding expenses.* Unsuccessful bidding costs are bidding expenses incurred in the solicitation of contracts not awarded to the taxpayer.

(K) *Deductible service costs.* Service costs that are not required to be capitalized include deductible service costs and deductible mixed service costs as defined in paragraph (e)(4) of this section.

(4) *Service costs*—(i) *Introduction.* This paragraph (e)(4) provides definitions and categories of service costs. Paragraph (g)(4) of this section provides specific rules for determining the amount of service costs allocable to property produced or property acquired for resale. In addition, paragraph (h) of this section provides a simplified method for determining the amount of service costs that must be capitalized.

(A) *Definition of service costs.* Service costs are defined as a type of indirect costs (e.g., general and administrative costs) that can be identified specifically with a service department or function or that directly benefit or are incurred by reason of a service department or function.

(B) *Definition of service departments.* Service departments are defined as administrative, service, or support departments that incur service costs. The facts and circumstances of the taxpayer's activities and business organization control whether a department is a service department. For example, service departments include personnel, accounting, data processing, security, legal, and other similar departments.

(ii) *Various service cost categories*—(A) *Capitalizable service costs.* Capitalizable service costs are defined as service costs that directly benefit or are incurred by reason of the performance of the production or resale activities of the taxpayer. Therefore, these service costs are required to be capitalized under section 263A. Examples of service departments or functions that incur capitalizable service costs are provided in paragraph (e)(4)(iii) of this section.

(B) *Deductible service costs.* Deductible service costs are defined as service costs that do not directly benefit or are not incurred by reason of the performance of the production or resale activities of the taxpayer, and therefore, are not required to be capitalized under section 263A. Deductible service costs generally include costs incurred by reason of the taxpayer's overall management or policy guidance functions. In addition, deductible service costs include costs incurred by reason of the marketing, selling, advertising, and distribution activities of the taxpayer. Examples of service departments or functions that incur deductible service costs are provided in paragraph (e)(4)(iv) of this section.

(C) *Mixed service costs.* Mixed service costs are defined as service costs that are partially allocable to production or resale activities (capitalizable mixed service costs) and partially allocable to non-production or non-resale activities (deductible mixed service costs). For example, a personnel department may incur costs to recruit factory workers, the costs of which are allocable to production activities, and it may incur costs to develop wage, salary, and benefit policies, the costs of which are allocable to non-production activities.

(iii) *Examples of capitalizable service costs.* Costs incurred in the following departments or functions are generally allocated among production or resale activities:

(A) The administration and coordination of production or resale activities (wherever performed in the business organization of the taxpayer).

(B) Personnel operations, including the cost of recruiting, hiring, relocating, assigning, and maintaining personnel records or employees.

(C) Purchasing operations, including purchasing materials and equipment, scheduling and coordinating delivery of materials and equipment to or from factories or job sites, and expediting and follow-up.

(D) Materials handling and warehousing and storage operations.

(E) Accounting and data services operations, including, for example, cost accounting, accounts payable, disbursements, and payroll functions (but excluding accounts receivable and customer billing functions).

(F) Data processing.

(G) Security services.

(H) Legal services.

(iv) *Examples of deductible service costs.* Costs incurred in the following departments or functions are not generally allocated to production or resale activities:

(A) Departments or functions responsible for overall management of the taxpayer or for setting overall policy for all of the taxpayer's activities or trades or businesses, such as the board of directors (including their immediate staff), and the chief executive, financial, accounting, and legal officers (including their immediate staff) of the taxpayer, provided that no substantial part of the cost of such departments or functions benefits a particular production or resale activity.

(B) Strategic business planning.

(C) General financial accounting.

(D) General financial planning (including general budgeting) and financial management (including bank relations and cash management).

(E) Personnel policy (such as establishing and managing personnel policy in general; developing wage, salary, and benefit policies; developing employee training programs unrelated to particular production or resale activities; negotiating with labor unions, and maintaining relations with retired workers).

(F) Quality control policy.

(G) Safety engineering policy.

(H) Insurance or risk management policy (but not including bid or performance bonds or insurance related to activities associated with property produced or property acquired for resale).

(I) Environmental management policy (except to the extent that the costs of any system or procedure benefits a particular production or resale activity).

(J) General economic analysis and forecasting.

(K) Internal audit.

(L) Shareholder, public, and industrial relations.

(M) Tax services.

(N) Marketing, selling, or advertising.

(f) *Cost allocation methods*—(1) *Introduction.* This paragraph (f) sets forth various detailed or specific (facts-and-circumstances) cost allocation methods that taxpayers may use to allocate direct and indirect costs to property produced and property acquired for resale. Paragraph (g) of this section provides general rules for applying these allocation methods to various categories of costs (i.e., direct materials, direct labor, and indirect costs, including service costs). In addition, in lieu of a facts-and-circumstances allocation method, taxpayers may use the simplified methods provided in §§ 1.263A–2(b) and 1.263A–3(d) to allocate direct and indirect costs to eligible property produced or eligible property acquired for resale; see those sections for definitions of eligible property.

Paragraph (h) of this section provides a simplified method for determining the amount of mixed service costs required to be capitalized to eligible property. The methodology set forth in paragraph (h) of this section for mixed service costs may be used in conjunction with either a facts-and-circumstances or a simplified method of allocating costs to eligible property produced or eligible property acquired for resale.

(2) *Specific identification method.* A specific identification method traces costs to a cost objective, such as a function, department, activity, or product, on the basis of a cause and effect or other reasonable relationship between the costs and the cost objective.

(3) *Burden rate and standard cost methods*—(i) *Burden rate method*—(A) *In general.* A burden rate method allocates an appropriate amount of indirect costs to property produced or property acquired for resale during a taxable year using predetermined rates that approximate the actual amount of indirect costs incurred by the taxpayer during the taxable year. Burden rates (such as ratios based on direct costs, hours, or similar items) may be developed by the taxpayer in accordance with acceptable accounting principles and applied in a reasonable manner. A taxpayer may allocate different indirect costs on the basis of different burden rates. Thus, for example, the taxpayer may use one burden rate for allocating the cost of rent and another burden rate for allocating the cost of utilities. Any periodic adjustment to a burden rate that merely reflects current operating conditions, such as increases in automation or changes in operation or prices, is not a change in method of accounting under section 446(e). A change, however, in the concept or base upon which such rates are developed, such as a change from basing the rates on direct labor hours to basing them on direct machine hours, is a change in method of accounting to which section 446(e) applies.

(B) *Development of burden rates.* The following factors, among others, may be used in developing burden rates:

(*1*) The selection of an appropriate level of activity and a period of time upon which to base the calculation of rates reflecting operating conditions for purposes of the unit costs being determined.

(*2*) The selection of an appropriate statistical base, such as direct labor hours, direct labor dollars, machine hours, or a combination thereof, upon which to apply the overhead rate.

(*3*) The appropriate budgeting, classification and analysis of expenses (for example, the analysis of fixed versus variable costs).

(C) *Operation of the burden rate method.* The purpose of the burden rate method is to allocate an appropriate amount of indirect costs to production or resale activities through the use of predetermined rates intended to approximate the actual amount of indirect costs incurred. Accordingly, the proper use of the burden rate method under this section requires that any net negative or net positive difference between the total predetermined amount of costs allocated to property and the total amount of indirect costs actually incurred and required to be allocated to such property (i.e., the under or over-applied burden) must be treated as an adjustment to the taxpayer's ending inventory or capital account (as the case may be) in the taxable year in which such difference arises. However, if such adjustment is not significant in amount in relation to the taxpayer's total indirect costs incurred with respect to production or resale activities for the year, such adjustment need not be allocated to the property produced or property acquired for resale unless such allocation is made in the taxpayer's financial reports. The taxpayer must treat both positive and negative adjustments consistently.

(ii) *Standard cost method*—(A) *In general.* A standard cost method allocates an appropriate amount of direct and indirect costs to property produced by the taxpayer through the use of preestablished standard allowances, without reference to costs actually incurred during the taxable year. A taxpayer may use a standard cost method to allocate costs, provided variances are treated in accordance with the procedures prescribed in paragraph (f)(3)(ii)(B) of this section. Any periodic adjustment to standard costs that merely reflects current operating conditions, such as increases in automation or changes in operation or prices, is not a change in method of accounting under section 446(e). A change, however, in the concept or base upon which standard costs are developed is a change in method of accounting to which section 446(e) applies.

(B) *Treatment of variances.* For purposes of this section, net positive overhead variance means the excess of total standard indirect costs over total actual indirect costs and net negative overhead variance means the excess of total actual indirect costs over total standard indirect costs. The proper use of a standard cost method requires that a taxpayer must reallocate to property a pro rata portion of any net negative or net positive overhead variances and any net negative or net positive direct cost variances. The taxpayer must apportion such variances to or among the property to which the costs are allocable. However, if such variances are not significant in amount relative to the taxpayer's total indirect costs incurred with respect to production and resale activities for the year, such variances need not be allocated to property produced or property acquired for resale unless such allocation is made in the taxpayer's financial reports. A taxpayer must treat both positive and negative variances consistently.

(4) *Reasonable allocation methods.* A taxpayer may use the methods described in paragraph (f) (2) or (3) of this section if they are reasonable allocation methods within the meaning of this paragraph (f)(4). In addition, a taxpayer may use any other reasonable method to properly allocate direct and indirect costs among units of property produced or property acquired for resale during the taxable year. An allocation method is reasonable if, with respect to the taxpayer's production or resale activities taken as a whole—

(i) The total costs actually capitalized during the taxable year do not differ significantly from the aggregate costs that would be properly capitalized using another permissible method described in this section or in §§ 1.263A–2 and 1.263A–3, with appropriate consideration given to the volume and value of the taxpayer's production or resale activities, the availability of costing information, the time and cost of using various allocation methods, and the accuracy of the allocation method chosen as compared with other allocation methods;

(ii) The allocation method is applied consistently by the taxpayer; and

(iii) The allocation method is not used to circumvent the requirements of the simplified methods in this section or in § 1.263A–2, § 1.263A–3, or the principles of section 263A.

(g) *Allocating categories of costs*—(1) *Direct materials.* Direct material costs (as defined in paragraph (e)(2) of this section) incurred during the taxable year must be allocated to the property produced or property acquired for resale by the taxpayer using the taxpayer's method of accounting for materials (e.g., specific identification; first-in, first-out (FIFO); or last-in, first-out (LIFO)), or any other reasonable allocation method (as defined under the principles of paragraph (f)(4) of this section).

(2) *Direct labor.* Direct labor costs (as defined in paragraph (e)(2) of this section) incurred during the taxable year are generally allocated to property produced or property acquired for resale

using a specific identification method, standard cost method, or any other reasonable allocation method (as defined under the principles of paragraph (f)(4) of this section). All elements of compensation, other than basic compensation, may be grouped together and then allocated in proportion to the charge for basic compensation. Further, a taxpayer is not treated as using an erroneous method of accounting if direct labor costs are treated as indirect costs under the taxpayer's allocation method, provided such costs are capitalized to the extent required by paragraph (g)(3) of this section.

(3) *Indirect costs.* Indirect costs (as defined in paragraph (e)(3) of this section) are generally allocated to intermediate cost objectives such as departments or activities prior to the allocation of such costs to property produced or property acquired for resale. Indirect costs are allocated using either a specific identification method, a standard cost method, a burden rate method, or any other reasonable allocation method (as defined under the principles of paragraph (f)(4) of this section).

(4) *Service costs*—(i) *In general.* Service costs are a type of indirect costs that may be allocated using the same allocation methods available for allocating other indirect costs described in paragraph (g)(3) of this section. Generally, taxpayers that use a specific identification method or another reasonable allocation method must allocate service costs to particular departments or activities based on a factor or relationship that reasonably relates the service costs to the benefits received from the service departments or activities. For example, a reasonable factor for allocating legal services to particular departments or activities is the number of hours of legal services attributable to each department or activity. See paragraph (g)(4)(iv) of this section for other illustrations. Using reasonable factors or relationships, a taxpayer must allocate mixed service costs under a direct reallocation method described in paragraph (g)(4)(iii)(A) of this section, a step-allocation method described in paragraph (g)(4)(iii)(B) of this section, or any other reasonable allocation method (as defined under the principles of paragraph (f)(4) of this section).

(ii) *De minimis rule.* For purposes of administrative convenience, if 90 percent or more of a mixed service department's costs are deductible service costs, a taxpayer may elect not to allocate any portion of the service department's costs to property produced or property acquired for resale. For example, if 90 percent of the costs of an electing taxpayer's industrial relations department benefit the taxpayer's overall policy-making activities, the taxpayer is not required to allocate any portion of these costs to a production activity. Similarly, if 90 percent or more of a mixed service department's costs are capitalizable service costs, a taxpayer may elect to allocate 100 percent of the department's costs to the production or resale activity benefitted. For example, if 90 percent of the costs of an electing taxpayer's accounting department benefit the taxpayer's manufacturing activity, the taxpayer must allocate 100 percent of the costs of the accounting department to the manufacturing activity. An election under this paragraph (g)(4)(ii) applies to all of a taxpayer's mixed service departments and constitutes the adoption of a (or a change in) method of accounting under section 446 of the Internal Revenue Code.

(iii) *Methods for allocating mixed service costs*—(A) *Direct reallocation method.* Under the direct reallocation method, the total costs (direct and indirect) of all mixed service departments are allocated only to departments or cost centers engaged in production or resale activities and then from those departments to particular activities. This direct reallocation method ignores benefits provided by one mixed service department to other mixed service departments, and also excludes other mixed service departments from the base used to make the allocation.

(B) *Step-allocation method.* (*1*) Under a step-allocation method, a sequence of allocations is made by the taxpayer. First, the total costs of the mixed service departments that benefit the greatest number of other departments are allocated to—

(*i*) Other mixed service departments;

(*ii*) Departments that incur only deductible service costs; and

(*iii*) Departments that exclusively engage in production or resale activities.

(*2*) A taxpayer continues allocating mixed service costs in the manner described in paragraph (g)(4)(iii)(B)(*1*) of this section (i.e., from the service departments benefitting the greatest number of departments to the service departments benefitting the least number of departments) until all mixed service costs are allocated to the types of departments listed in this paragraph (g)(4)(iii). Thus, a step-allocation method recognizes the benefits provided by one mixed service department to another mixed service department and also includes mixed service departments that have not yet been allocated in the base used to make the allocation.

(C) *Examples.* The provisions of this paragraph (g)(4)(iii) are illustrated by the following examples:

Example 1. Direct reallocation method. (i) Taxpayer E has the following five departments: the Assembling Department, the Painting Department, and the Finishing Department (production departments), and the Personnel Department and the Data Processing Department (mixed service departments). E allocates the Personnel Department's costs on the basis of total payroll costs and the Data Processing Department's costs on the basis of data processing hours.

(ii) Under a direct reallocation method, E allocates the Personnel Department's costs directly to its Assembling, Painting, and Finishing Department, and not to its Data Processing department.

Department	Total dept. costs	Amount of payroll costs	Allocation ratio	Amount allocated
Personnel	$500,000	$50,000		<$500,000>
Data Proc'g	250,000	15,000		
Assembling	250,000	15,000	15,000/285,000	26,315
Painting	1,000,000	90,000	90,000/285,000	157,895
Finishing	2,000,000	180,000	180,000/285,000	315,790
Total	$4,000,000	$350,000		

(iii) After E allocates the Personnel Department's costs, E then allocates the costs of its Data Processing Department in the same manner.

Department	Total dept. cost after initial allocation	Total data proc. hours	Allocation ratio	Amount allocated	Total dept. cost after final allocation
Personnel	0	2,000			0
Data Proc'g	$250,000			<$250,000>	
Assembling	276,315	2,000	2,000/10,000	50,000	$326,315
Painting	1,157,895	0	0/10,000	0	1,157,895
Finishing	2,315,790	8,000	8,000/10,000	200,000	2,515,790
Total	$4,000,000	12,000			$4,000,000

Example 2. Step-allocation method. (i) Taxpayer F has the following five departments: the Manufacturing Department (a production department), the Marketing Department and the Finance Department (departments that incur only deductible service costs), the Personnel Department and the Data Processing Department (mixed service departments). F uses a step-allocation method and allocates the Personnel Department's costs on the basis of total payroll costs and the Data Processing Department's costs on the basis of data processing hours. F's Personnel Department benefits all four of F's other departments, while its Data Processing Department benefits only three departments. Because F's Personnel Department benefits the greatest number of other departments, F first allocates its Personnel Department's costs to its Manufacturing, Marketing, Finance and Data Processing departments, as follows:

Department	Total cost of dept.	Total payroll costs	Allocation ratio	Amount allocated
Personnel	$500,000	$50,000		<$500,000>
Data Proc'g	250,000	15,000	15,000/300,000	25,000
Finance	250,000	15,000	15,000/300,000	25,000
Marketing	1,000,000	90,000	90,000/300,000	150,000
Manufac'g	2,000,000	180,000	180,000/300,000	300,000
	4,000,000	350,000		

(ii) Under a step-allocation method, the denominator of F's allocation ratio includes the payroll costs of its Manufacturing, Marketing, Finance, and Data Processing departments.

(iii) Next, F allocates the costs of its Data Processing Department on the basis of data processing hours. Because the costs incurred by F's Personnel Department have already been allocated, no allocation is made to the Personnel Department.

Department	Total dept. cost after initial allocation	Total data proc. hours	Allocation ratio	Amount allocated	Total dept. cost after final allocation
Personnel	$0	2,000			$0
Data Proc'g	275,000			<$275,000>	0
Finance	275,000	2,000	2,000/10,000	55,000	330,000
Marketing	1,150,000	0	0/10,000	0	1,150,000
Manufac'g	2,300,000	8,000	8,000/10,000	220,000	2,520,000
	4,000,000	12,000			4,000,000

(iv) Under the second step of F's step-allocation method, the denominator of F's allocation ratio includes the data processing hours of its Manufacturing, Marketing, and Finance Departments, but does not include the data processing hours of its Personnel Department (the other mixed service department) because the costs of that department have previously been allocated.

(iv) *Illustrations of mixed service cost allocations using reasonable factors or relationships.* This paragraph (g)(4)(iv) illustrates various reasonable factors and relationships that may be used in allocating different types of mixed service costs. Taxpayers, however, are permitted to use other reasonable factors and relationships to allocate mixed service costs. In addition, the factors or relationships illustrated in this paragraph (g)(4)(iv) may be used to allocate other types of service costs not illustrated in this paragraph (g)(4)(iv).

(A) *Security services.* The costs of security or protection services must be allocated to each physical area that receives the services using any reasonable method applied consistently (e.g., the size of the physical area, the number of employees in the area, or the relative fair market value of assets located in the area).

(B) *Legal services.* The costs of legal services are generally allocable to a particular production or resale activity on the basis of the approximate number of hours of legal service performed in connection with the activity, including research, bidding, negotiating, drafting, reviewing a contract, obtaining necessary licenses and permits, and resolving disputes. Different hourly rates may be appropriate for different services. In determining the number of hours allocable to any activity, estimates are appropriate, detailed time records are not required to be kept, and insubstantial amounts of services provided to an activity by senior legal staff (such as administrators or reviewers) may be ignored. Legal costs may also be allocated to a particular production or resale activity based on the ratio of the total direct costs incurred for the activity to the total direct costs incurred with respect to all production or resale activities. The taxpayer must also allocate directly to an activity the cost incurred for any outside legal services. Legal costs relating to general corporate functions are not required to be allocated to a particular production or resale activity.

(C) *Centralized payroll services.* The costs of a centralized payroll

department or activity are generally allocated to the departments or activities benefitted on the basis of the gross dollar amount of payroll processed.

(D) *Centralized data processing services.* The costs of a centralized data processing department are generally allocated to all departments or activities benefitted using any reasonable basis, such as total direct data processing costs or the number of data processing hours supplied. The costs of data processing systems or applications developed for a particular activity are directly allocated to that activity.

(E) *Engineering and design services.* The costs of an engineering or a design department are generally directly allocable to the departments or activities benefitted based on the ratio of the approximate number of hours of work performed with respect to the particular activity to the total number of hours of engineering or design work performed for all activities. Different services may be allocated at different hourly rates.

(F) *Safety engineering services.* The costs of a safety engineering departments or activities generally benefit all of the taxpayer's activities and, thus, should be allocated using a reasonable basis, such as: the approximate number of safety inspections made in connection with a particular activity as a fraction of total inspections, the number of employees assigned to an activity as a fraction of total employees, or the total labor hours worked in connection with an activity as a fraction of total hours. However, in determining the allocable costs of a safety engineering department, costs attributable to providing a safety program relating only to a particular activity must be directly assigned to such activity. Additionally, the cost of a safety engineering department only responsible for setting safety policy and establishing safety procedures to be used in all of the taxpayer's activities is not required to be allocated.

(v) *Accounting method change.* A change in the method or base used to allocate service costs (such as changing from an allocation base using direct labor costs to a base using direct labor hours), or a change in the taxpayer's determination of what functions or departments of the taxpayer are to be allocated, is a change in method of accounting to which section 446(e) and the regulations thereunder apply.

(h) *Simplified service cost method*—(1) *Introduction.* This paragraph (h) provides a simplified method for determining capitalizable mixed service costs incurred during the taxable year with respect to eligible property (i.e., the aggregate portion of mixed service costs that are properly allocable to the taxpayer's production or resale activities).

(2) *Eligible property*—(i) *In general.* Except as otherwise provided in paragraph (h)(2)(ii) of this section, the simplified service cost method, if elected for any trade or business of the taxpayer, must be used for all production and resale activities of the trade or business associated with any of the following categories of property that are subject to section 263A:

(A) *Inventory property.* Stock in trade or other property properly includible in the inventory of the taxpayer.

(B) *Non-inventory property held for sale.* Non-inventory property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(C) *Certain self-constructed assets.* Self-constructed assets substantially identical in nature to, and produced in the same manner as, inventory property produced by the taxpayer or other property produced by the taxpayer and held primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(D) *Self-constructed assets produced on a repetitive basis.* Self-constructed assets produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business.

(ii) *Election to exclude self-constructed assets.* At the taxpayer's election, the simplified service cost method may be applied within a trade or business to only the categories of inventory property and non-inventory property held for sale described in paragraphs (h)(2)(i) (A) and (B) of this section. Taxpayers electing to exclude the self-constructed assets described in paragraphs (h)(2)(i) (C) and (D) of this section from application of the simplified service cost method must, however, allocate service costs to such property in accordance with paragraph (g)(4) of this section.

(3) *General allocation formula.* (i) Under the simplified service cost method, a taxpayer computes its capitalizable mixed service costs using the following formula:

$$\text{Allocation ratio} \times \text{total mixed service costs}$$

(ii) A producer may elect one of two allocation ratios, the labor-based allocation ratio or the production cost allocation ratio. A reseller that satisfies the requirements for using the simplified resale method of § 1.263A–3(d) (whether or not that method is elected) may elect the simplified service cost method, but must use a labor-based allocation ratio. (See § 1.263A–3(d) for labor-based allocation ratios to be used in conjunction with the simplified resale method.) The allocation ratio used by a trade or business of a taxpayer is a method of accounting which must be applied consistently within the trade or business.

(4) *Labor-based allocation ratio.* (i) The labor-based allocation ratio is computed as follows:

$$\frac{\text{Section 263A labor costs}}{\text{Total labor costs}}$$

(ii) Section 263A labor costs are defined as the total labor costs (excluding labor costs included in mixed service costs) allocable to property produced and property acquired for resale under section 263A that are incurred in the taxpayer's trade or business during the taxable year. Total labor costs are defined as the total labor costs (excluding labor costs included in mixed service costs) incurred in the taxpayer's trade or business during the taxable year. Total labor costs include labor costs incurred in all parts of the trade or business (i.e., if the taxpayer has both property produced and property acquired for resale, the taxpayer must include labor costs from resale activities as well as production activities). For example, taxpayer G incurs $1,000 of total mixed service costs during the taxable year. G's section 263A labor costs are $5,000 and its total labor costs are $10,000. Under the labor-based allocation ratio, G's capitalizable mixed service costs are $500 (i.e., $1,000 × ($5,000 divided by $10,000)).

(5) *Production cost allocation ratio.* (i) Producers may use the production cost allocation ratio, computed as follows:

$$\frac{\text{Section 263A production costs}}{\text{Total costs}}$$

(ii) Section 263A production costs are defined as the total costs (excluding mixed service costs and interest) allocable to property produced (and

property acquired for resale if the producer is also engaged in resale activities) under section 263A that are incurred in the taxpayer's trade or business during the taxable year. Total costs are defined as all costs (excluding mixed service costs and interest) incurred in the taxpayer's trade or business during the taxable year. Total costs include all direct and indirect costs allocable to property produced (and property acquired for resale if the producer is also engaged in resale activities) as well as all other costs of the taxpayer's trade or business, including, but not limited to: salaries and other labor costs of all personnel; all depreciation taken for federal income tax purposes; research and experimental expenditures; and selling, marketing, and distribution costs. Such costs do not include, however, taxes described in paragraph (e)(3)(iii)(F) of this section. For example, taxpayer H, a producer, incurs $1,000 of total mixed service costs in the taxable year. H's section 263A production costs are $10,000 and its total costs are $20,000. Under the production cost allocation ratio, H's capitalizable mixed service costs are $500 (i.e., $1,000 X ($10,000 divided by $20,000)).

(6) *Definition of total mixed service costs.* Total mixed service costs are defined as the total costs incurred during the taxable year in all departments or functions of the taxpayer's trade or business that perform mixed service activities. See paragraph (e)(4)(ii)(C) of this section which defines mixed service costs. In determining the total mixed service costs of a trade or business, the taxpayer must include all costs incurred in its mixed service departments and cannot exclude any otherwise deductible service costs. For example, if the accounting department within a trade or business is a mixed service department, then in determining the total mixed service costs of the trade or business, the taxpayer cannot exclude the costs of personnel in the accounting department that perform services relating to non-production activities (e.g., accounts receivable or customer billing activities). Instead, the entire cost of the accounting department must be included in the total mixed service costs.

(7) *Costs allocable to more than one business.* To the extent mixed service costs, labor costs, or other costs are incurred in more than one trade or business, the taxpayer must determine the amounts allocable to the particular trade or business for which the simplified service cost method is being applied by using any reasonable allocation method consistent with the principles of paragraph (f)(4) of this section.

(8) *De minimis rule.* If the taxpayer elects to apply the de minimis rule of paragraph (g)(4)(ii) of this section to any mixed service department, the department is not considered a mixed service department for purposes of the simplified service cost method. Instead, the costs of such department are allocated exclusively to the particular activity satisfying the 90-percent test.

(9) *Separate election.* A taxpayer may elect the simplified service cost method in conjunction with any other allocation method used at the trade or business level, including the simplified methods described in §§ 1.263A–2(b) and 1.263A–3(d). However, the election of the simplified service cost method must be made independently of the election to use those other simplified methods.

(i) [Reserved]

(j) *Special rules*—(1) *Costs provided by a related person*—(i) *In general.* A taxpayer subject to section 263A must capitalize an arm's-length charge for any section 263A costs (e.g., costs of materials, labor, or services) incurred by a related person that are properly allocable to the property produced or property acquired for resale by the taxpayer. Both the taxpayer and the related person must account for the transaction as if an arm's-length charge had been incurred by the taxpayer with respect to its property produced or property acquired for resale. For purposes of this paragraph (j)(1)(i), a taxpayer is considered related to another person if the taxpayer and such person are described in section 482. Further, for purposes of this paragraph (j)(1)(i), arm's-length charge means the arm's-length charge (or other appropriate charge where permitted and applicable) under the principles of section 482. Any correlative adjustments necessary because of the arm's-length charge requirement of this paragraph (j)(1)(i) shall be determined under the principles of section 482.

(ii) *Exceptions.* The provisions of paragraph (j)(1)(i) of this section do not apply if, and to the extent that—

(A) It would be inappropriate under the principles of section 482 for the Commissioner to adjust the income of the taxpayer or the related person with respect to the transaction at issue; or

(B) A transaction is accounted for under an alternative Internal Revenue Code section resulting in the capitalization (or deferral of the deduction) of the costs of the items provided by the related party and the related party does not deduct such costs earlier than the costs would have been deducted by the taxpayer if the costs were capitalized under section 263A. Thus, for example, paragraph (j)(1)(i) of this section does not apply if, and to the extent that, a transaction is treated as a deferred intercompany transaction under § 1.1502–13, and the gain or loss is deferred by the selling member under that section.

(2) *Optional capitalization of period costs*—(i) *In general.* Taxpayers are not required to capitalize indirect costs that do not directly benefit or are not incurred by reason of the production of property or acquisition of property for resale (i.e., period costs). A taxpayer may, however, elect to capitalize certain period costs if: The method is consistently applied; is used in computing beginning inventories, ending inventories, and cost of goods sold; and does not result in a material distortion of the taxpayer's income. A material distortion relates to the source, character, amount, or timing of the cost capitalized or any other item affected by the capitalization of the cost. Thus, for example, a taxpayer may not capitalize a period cost under section 263A if capitalization would result in a material change in the computation of the foreign tax credit limitation under section 904. An election to capitalize a period cost is the adoption of (or a change in) a method of accounting under section 446 of the Internal Revenue Code.

(ii) *Period costs eligible for capitalization.* The types of period costs eligible for capitalization under this paragraph (j)(2) include only the types of period costs (e.g., under paragraph (e)(3)(iii) of this section) for which some portion of the costs incurred is properly allocable to property produced or property acquired for resale in the year of the election. Thus, for example, marketing or advertising costs, no portion of which are properly allocable to property produced or property acquired for resale, do not qualify for elective capitalization under this paragraph (j)(2).

(3) *Trade or business application.* Notwithstanding the references generally to taxpayer throughout this section and §§ 1.263A–2 and 1.263A–3, the methods of accounting provided under section 263A are to be elected and applied independently for each separate and distinct trade or business of the taxpayer in accordance with the provisions of section 446(d) and the regulations thereunder.

(4) *Transfers with a principal purpose of tax avoidance.* [Reserved]

Par. 6. Section 1.263A–1T is amended by adding three sentences to the end of paragraph (a)(4) to read as follows:

§ 1.263A–1T Capitalization and inclusion of inventory costs of certain expenses (temporary).

(a) * * *

(4) * * * Paragraphs (a), (b), and (d) (excluding paragraphs (d)(3)(ii)(C) (*2*), (*3*), and (*4*) are not effective for costs incurred after December 31, 1993, in taxable years beginning after that date. In the case of property that is inventory in the hands of the taxpayer, however, those paragraphs are not effective for taxable years beginning after December 31, 1993. See §§ 1.263A–1, 1.263A–2, and 1.263A–3 for rules applicable in taxable years beginning after December 31, 1993, for taxpayers previously subject to those paragraphs.

* * * * *

Par. 7. Sections 1.263A–2 and 1.263A–3 are added, and §§ 1.263A–4 through 1.263A–6 are added and reserved to read as follows:

§ 1.263A–2 Rules relating to property produced by the taxpayer.

(a) *In general.* Section 263A applies to real property and tangible personal property produced by a taxpayer for use in its trade or business or for sale to its customers. In addition, section 263A applies to property produced for a taxpayer under a contract with another party. The principal terms related to the scope of section 263A with respect to producers are provided in this paragraph (a). See § 1.263A–1(b)(11) for an exception in the case of certain de minimis property provided to customers incident to the provision of services.

(1) *Produce*—(i) *In general.* For purposes of section 263A, produce includes the following: construct, build, install, manufacture, develop, improve, create, raise, or grow.

(ii) *Ownership*—(A) *General rule.* Except as provided in paragraphs (a)(1)(ii) (B) and (C) of this section, a taxpayer is not considered to be producing property unless the taxpayer is considered an owner of the property produced under federal income tax principles. The determination as to whether a taxpayer is an owner is based on all of the facts and circumstances, including the various benefits and burdens of ownership vested with the taxpayer. A taxpayer may be considered an owner of property produced, even though the taxpayer does not have legal title to the property.

(B) *Property produced for the taxpayer under a contract*—(*1*) *In general.* Property produced for the taxpayer under a contract with another party is treated as property produced by the taxpayer to the extent the taxpayer makes payments or otherwise incurs costs with respect to the property. A taxpayer has made payment under this section if the transaction would be considered payment by a taxpayer using the cash receipts and disbursements method of accounting.

(*2*) *Definition of contract.* [Reserved]

(C) *Home construction contracts.* Section 460(e)(1) provides that section 263A applies to a home construction contract unless that contract will be completed within two years of the contract commencement date and the taxpayer's average annual gross receipts for the three preceding taxable years do not exceed $10,000,000. Section 263A applies to such a contract even if the contractor is not considered the owner of the property produced under the contract under federal income tax principles.

(2) *Tangible personal property*—(i) *General rule.* In general, section 263A applies to the costs of producing tangible personal property, and not to the costs of producing intangible property. For example, section 263A applies to the costs manufacturers incur to produce goods, but does not apply to the costs financial institutions incur to originate loans.

(ii) *Intellectual or creative property.* For purposes of determining whether a taxpayer producing intellectual or creative property is producing tangible personal property or intangible property, the term tangible personal property includes films, sound recordings, video tapes, books, and other similar property embodying words, ideas, concepts, images, or sounds by the creator thereof. Other similar property for this purpose generally means intellectual or creative property for which, as costs are incurred in producing the property, it is intended (or is reasonably likely) that any tangible medium in which the property is embodied will be mass distributed by the creator or any one or more third parties in a form that is not substantially altered. However, any intellectual or creative property that is embodied in a tangible medium that is mass distributed merely incident to the distribution of a principal product or good of the creator is not other similar property for these purposes.

(A) *Intellectual or creative property that is tangible personal property.* Section 263A applies to tangible personal property defined in this paragraph (a)(2) without regard to whether such property is treated as tangible or intangible property under other sections of the Internal Revenue Code. Thus, for example, section 263A applies to the costs of producing a motion picture or researching and writing a book even though these assets may be considered intangible for other purposes of the Internal Revenue Code. Tangible personal property includes, for example, the following:

(*1*) *Books.* The costs of producing and developing books (including teaching aids and other literary works) required to be capitalized under this section include costs incurred by an author in researching, preparing, and writing the book. (However, see section 263A(h), which provides an exemption from the capitalization requirements of section 263A in the case of certain free-lance authors.) In addition, the costs of producing and developing books include prepublication expenditures incurred by publishers, including payments made to authors (other than commissions for sales of books that have already taken place), as well as costs incurred by publishers in writing, editing, compiling, illustrating, designing, and developing the books. The costs of producing a book also include the costs of producing the underlying manuscript, copyright, or license. (These costs are distinguished from the separately capitalizable costs of printing and binding the tangible medium embodying the book (e.g., paper and ink).) See § 1.174–2(a)(1), which provides that the term research or experimental expenditures does not include expenditures incurred for research in connection with literary, historical, or similar projects.

(*2*) *Sound recordings.* A sound recording is a work that results from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material objects, such as discs, tapes, or other phonorecordings, in which such sounds are embodied.

(B) *Intellectual or creative property that is not tangible personal property.* Items that are not considered tangible personal property within the meaning of section 263A(b) and paragraph (a)(2)(ii) of this section include:

(*1*) *Evidences of value.* Tangible personal property does not include property that is representative or evidence of value, such as stock, securities, debt instruments, mortgages, or loans.

(*2*) *Property provided incident to services.* Tangible personal property does not include de minimis property provided to a client or customer incident to the provision of services, such as wills prepared by attorneys, or blueprints prepared by architects. See § 1.263A–1(b)(11).

(3) *Costs required to be capitalized by producers*—(i) *In general.* Except as specifically provided in section 263A(f) with respect to interest costs, producers must capitalize direct and indirect costs

properly allocable to property produced under section 263A, without regard to whether those costs are incurred before, during, or after the production period (as defined in section 263A(f)(4)(B)).

(ii) *Pre-production costs.* If property is held for future production, taxpayers must capitalize direct and indirect costs allocable to such property (e.g., purchasing, storage, handling, and other costs), even though production has not begun. If property is not held for production, indirect costs incurred prior to the beginning of the production period must be allocated to the property and capitalized if, at the time the costs are incurred, it is reasonably likely that production will occur at some future date. Thus, for example, a manufacturer must capitalize the costs of storing and handling raw materials before the raw materials are committed to production. In addition, a real estate developer must capitalize property taxes incurred with respect to property if, at the time the taxes are incurred, it is reasonably likely that the property will be subsequently developed.

(iii) *Post-production costs.* Generally, producers must capitalize all indirect costs incurred subsequent to completion of production that are properly allocable to the property produced. Thus, for example, storage and handling costs incurred while holding the property produced for sale after production must be capitalized to the property to the extent properly allocable to the property. However, see § 1.263A–3(c) for exceptions.

(4) *Practical capacity concept.* Notwithstanding any provision to the contrary, the use, directly or indirectly, of the practical capacity concept is not permitted under section 263A. For purposes of section 263A, the term practical capacity concept means any concept, method, procedure, or formula (such as the practical capacity concept described in § 1.471–11(d)(4)) whereunder fixed costs are not capitalized because of the relationship between the actual production at the taxpayer's production facility and the practical capacity of the facility. For purposes of this section, the practical capacity of a facility includes either the practical capacity or theoretical capacity of the facility, as defined in § 1.471–11(d)(4), or any similar determination of productive or operating capacity. The practical capacity concept may not be used with respect to any activity to which section 263A applies (i.e., production or resale activities). A taxpayer shall not be considered to be using the practical capacity concept solely because the taxpayer properly does not capitalize costs described in § 1.263A–1(e)(3)(iii)(E), relating to certain costs attributable to temporarily idle equipment.

(5) *Taxpayers required to capitalize costs under this section.* This section generally applies to taxpayers that produce property. If a taxpayer is engaged in both production activities and resale activities, the taxpayer applies the principles of this section as if it read production or resale activities, and by applying appropriate principles from § 1.263A–3. If a taxpayer is engaged in both production and resale activities, the taxpayer may elect the simplified production method provided in this section, but generally may not elect the simplified resale method discussed in § 1.263A–3(d). If elected, the simplified production method must be applied to all eligible property produced and all eligible property acquired for resale by the taxpayer.

(b) *Simplified production method*—(1) *Introduction.* This paragraph (b) provides a simplified method for determining the additional section 263A costs properly allocable to ending inventories of property produced and other eligible property on hand at the end of the taxable year.

(2) *Eligible property*—(i) *In general.* Except as otherwise provided in paragraph (b)(2)(ii) of this section, the simplified production method, if elected for any trade or business of a producer, must be used for all production and resale activities associated with any of the following categories of property to which section 263A applies:

(A) *Inventory property.* Stock in trade or other property properly includible in the inventory of the taxpayer.

(B) *Non-inventory property held for sale.* Non-inventory property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(C) *Certain self-constructed assets.* Self-constructed assets substantially identical in nature to, and produced in the same manner as, inventory property produced by the taxpayer or other property produced by the taxpayer and held primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(D) *Self-constructed assets produced on a repetitive basis.* Self-constructed assets produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business.

(ii) *Election to exclude self-constructed assets.* At the taxpayer's election, the simplified production method may be applied within a trade or business to only the categories of inventory property and non-inventory property held for sale described in paragraphs (b)(2)(i) (A) and (B) of this section. Taxpayers electing to exclude the self- constructed assets, defined in paragraphs (b)(2)(i) (C) and (D) of this section, from application of the simplified production method must, however, allocate additional section 263A costs to such property in accordance with § 1.263A–1 (f).

(3) *Simplified production method without historic absorption ratio election*—(i) *General allocation formula*—(A) *In general.* Except as otherwise provided in paragraph (b)(3)(iv) of this section, the additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year under the simplified production method are computed as follows:

$$\text{Absorption ratio} \times \text{section 471 costs remaining on hand at year end}$$

(B) *Effect of allocation.* The absorption ratio generally is multiplied by the section 471 costs remaining in ending inventory or otherwise on hand at the end of each taxable year in which the simplified production method is applied. The resulting product is the additional section 263A costs that are added to the taxpayer's ending section 471 costs to determine the section 263A costs that are capitalized. See, however, paragraph (b)(3)(iii) of this section for special rules applicable to LIFO taxpayers. Except as otherwise provided in this section or in § 1.263A–1 or 1.263A–3, additional section 263A costs that are allocated to inventories on hand at the close of the taxable year under the simplified production method of this paragraph (b) are treated as inventory costs for all purposes of the Internal Revenue Code.

(ii) *Definitions*—(A) *Absorption ratio.* Under the simplified production method, the absorption ratio is determined as follows:

$$\frac{\text{Additional section 263A costs incurred during the taxable year}}{\text{Section 471 costs incurred during the taxable year}}$$

(1) *Additional section 263A costs incurred during the taxable year.* Additional section 263A costs incurred during the taxable year are defined as the additional section 263A costs described in § 1.263A–1(d)(3) that a taxpayer incurs during its current taxable year.

(2) *Section 471 costs incurred during the taxable year.* Section 471 costs incurred during the taxable year are defined as the section 471 costs described in § 1.263A–1(d)(2) that a taxpayer incurs during its current taxable year.

(B) *Section 471 costs remaining on hand at year end.* Section 471 costs remaining on hand at year end are generally means the section 471 costs, as defined in § 1.263A–1(d)(2), that a taxpayer incurs during its current taxable year which remain in its ending inventory or are otherwise on hand at year end. For LIFO inventories of a taxpayer, the section 471 costs remaining on hand at year end means the increment, if any, for the current year stated in terms of section 471 costs. See paragraph (b)(3)(iii) of this section.

(iii) *LIFO taxpayers electing the simplified production method*—(A) *In general.* Under the simplified production method, a taxpayer using a LIFO method must calculate a particular year's index (e.g., under § 1.472–8(e)) without regard to its additional section 263A costs. Similarly, a taxpayer that adjusts current-year costs by applicable indexes to determine whether there has been an inventory increment or decrement in the current year for a particular LIFO pool must disregard the additional section 263A costs in making that determination.

(B) *LIFO increment.* If the taxpayer determines there has been an inventory increment, the taxpayer must state the amount of the increment in current-year dollars (stated in terms of section 471 costs). The taxpayer then multiplies this amount by the absorption ratio. The resulting product is the additional section 263A costs that must be added to the taxpayer's increment for the year stated in terms of section 471 costs.

(C) *LIFO decrement.* If the taxpayer determines there has been an inventory decrement, the taxpayer must state the amount of the decrement in dollars applicable to the particular year for which the LIFO layer has been invaded. The additional section 263A costs incurred in prior years that are applicable to the decrement are charged to cost of goods sold. The additional section 263A costs that are applicable to the decrement are determined by multiplying the additional section 263A costs allocated to the layer of the pool in which the decrement occurred by the ratio of the decrement (excluding additional section 263A costs) to the section 471 costs in the layer of that pool.

(iv) *De minimis rule for producers with total indirect costs of $200,000 or less*—(A) *In general.* If a producer using the simplified production method incurs $200,000 or less of total indirect costs in a taxable year, the additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year are deemed to be zero. Solely for purposes of this paragraph (b)(3)(iv), taxpayers are permitted to exclude any category of indirect costs (listed in § 1.263A–1(e)(3)(iii)) that is not required to be capitalized (e.g., selling and distribution costs) in determining total indirect costs.

(B) *Related party and aggregation rules.* In determining whether the producer incurs $200,000 or less of total indirect costs in a taxable year, the related party and aggregation rules of § 1.263A–3(b)(3) are applied by substituting total indirect costs for gross receipts wherever gross receipts appears.

(v) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples.

Example 1—FIFO inventory method (i) Taxpayer J uses the FIFO method of accounting for inventories. J's beginning inventory for 1994 (all of which is sold during 1994) is $2,500,000 (consisting of $2,000,000 of section 471 costs and $500,000 of additional section 263A costs). During 1994, J incurs $10,000,000 of section 471 costs and $1,000,000 of additional section 263A costs. J's additional section 263A costs include capitalizable mixed service costs computed under the simplified service cost method as well as other allocable costs. J's section 471 costs remaining in ending inventory at the end of 1994 are $3,000,000. J computes its absorption ratio for 1994, as follows:

$$\frac{\text{Additional section 263A costs incurred during 1994}}{\text{Section 471 costs incurred during 1994}} = \frac{\$1{,}000{,}000}{\$10{,}000{,}000} = 10\%$$

(ii) Under the simplified production method, J determines the additional section 263A costs allocable to its ending inventory by multiplying the absorption ratio by the section 471 costs remaining in its ending inventory:

$$\text{Additional section 263A costs} = 10\% \times \$3{,}000{,}000 = \$300{,}000$$

(iii) J adds this $300,000 to the $3,000,000 of section 471 costs remaining in its ending inventory to calculate its total ending inventory of $3,300,000. The balance of J's additional section 263A costs incurred during 1994, $700,000, ($1,000,000 less $300,000) is taken into account in 1994 as part of J's cost of goods sold.

Example 2—LIFO inventory method (i) Taxpayer K uses a dollar-value LIFO inventory method. K's beginning inventory for 1994 is $2,500,000 (consisting of $2,000,000 of section 471 costs and $500,000 of additional section 263A costs). During 1994, K incurs $10,000,000 of section 471 costs and $1,000,000 of additional section 263A costs. K's 1994 LIFO increment is $1,000,000 ($3,000,000 of section 471 costs in ending inventory less $2,000,000 of section 471 costs in beginning inventory).

(ii) To determine the additional section 263A costs allocable to its ending inventory, K multiplies the 10% absorption ratio ($1,000,000 additional section 263A costs divided by $10,000,000 section 471 costs) by the $1,000,000 LIFO increment. Thus, K's additional section 263A costs allocable to its ending inventory are $100,000 ($1,000,000 multiplied by 10%). This $100,000 is added to the $1,000,000 to determine a total 1994

LIFO increment of $1,100,000. K's ending inventory is $3,600,000 (its beginning inventory of $2,500,000 plus the $1,100,000 increment). The balance of K's additional section 263A costs incurred during 1994, $900,000 ($1,000,000 less $100,000), is taken into account in 1994 as part of K's cost of goods sold.

(iii) In 1995, K sells one-half of the inventory in its 1994 LIFO increment. K must include in its cost of goods sold for 1995 the amount of additional section 263A costs relating to this inventory, $50,000 (one-half of the additional section 263A costs capitalized in 1994 ending inventory, or $100,000).

Example 3—LIFO pools (i) Taxpayer L begins its business in 1994 and adopts the LIFO inventory method. During 1994, L incurs $10,000 of section 471 costs and $1,000 of additional section 263A costs. At the end of 1994, L's ending inventory includes $3,000 of section 471 costs contained in three LIFO pools (X, Y, and Z) as shown below. Under the simplified production method, L computes its absorption ratio and inventory for 1994 as follows:

$$\frac{\text{Additional section 263A costs incurred during 1994}}{\text{Section 471 costs incurred during 1994}} = \frac{\$1,000}{\$10,000} = 10\%$$

	Total	X	Y	Z
1994:				
Ending section 471 costs	$3,000	$1,600	$600	$800
Additional section 263A costs (10%)	300	160	60	80
1994 Ending Inventory	$3,300	$1,760	$660	$880

(ii) During 1995, L incurs $2,000 of section 471 costs as shown below and $400 of additional section 263A costs. Moreover, L sells goods from pools X, Y, and Z having a total cost of $1,000. L computes its absorption ratio and inventory for 1995:

$$\frac{\text{Additional section 263A costs incurred during 1995}}{\text{Section 471 costs incurred during 1995}} = \frac{\$400}{\$2,000} = 20\%$$

	Total	X	Y	Z
1995:				
Beginning section 471 costs	$3,000	$1,600	$600	$800
1995 section 471 costs	2,000	1,500	300	200
Section 471 cost of goods sold	(1,000)	(300)	(300)	(400)
1995 Ending Section 471 costs	$4,000	$2,800	$600	$600
Consisting of:				
1994 layer	$2,800	$1,600	$600	$600
1995 layer	1,200	1,200	.....	.....
	$4,000	$2,800	$600	$600
Additional section 263A costs:				
1994 (10%)	$280	$160	$60	$60
1995 (20%)	240	240	.....	.....
	$520	$400	$60	$60
1995 ending inventory	$4,520	$3,200	$660	$660

(iii) In 1995, L experiences a $200 decrement in pool Z. Thus, L must charge the additional section 263A costs incurred in prior years applicable to the decrement to 1995's cost of goods sold. To do so, L determines a ratio by dividing the decrement by the section 471 costs in the 1994 layer ($200 divided by $800, or 25%). L then multiplies this ratio (25%) by the additional section 263A costs in the 1994 layer ($80) to determine the additional section 263A costs applicable to the decrement ($20). Therefore, $20 is taken into account by L in 1995 as part of its cost of goods sold ($80 multiplied by 25%).

(4) *Simplified production method with historic absorption ratio election*—(i) *In general.* This paragraph (b)(4) generally permits producers using the simplified production method to elect a historic absorption ratio in determining additional section 263A costs allocable to eligible property remaining on hand at the close of their taxable years. Except as provided in paragraph (b)(4)(v) of this section, a taxpayer may only make a historic absorption ratio election if it has used the simplified production method for three or more consecutive taxable years immediately prior to the year of election and has capitalized additional section 263A costs using an actual absorption ratio (as defined under paragraph (b)(3)(ii) of this section) for its three most recent consecutive taxable years. This method is not available to a taxpayer that is deemed to have zero additional section 263A costs under paragraph (b)(3)(iv) of this section. The historic absorption ratio is used in lieu of an actual absorption ratio computed under paragraph (b)(3)(ii) of this section and is based on costs capitalized by a taxpayer during its test period. If elected, the historic absorption ratio must be used for each taxable year within the qualifying period described in paragraph (b)(4)(ii)(C) of this section.

(ii) *Operating rules and definitions*—(A) *Historic absorption ratio.* (*1*) The historic absorption ratio is equal to the following ratio:

$$\frac{\text{Additional section 263A costs incurred during the test period}}{\text{Section 471 costs incurred during the test period}}$$

(*2*) Additional section 263A costs incurred during the test period are defined as the additional section 263A costs described in § 1.263A–1(d)(3) that the taxpayer incurs during the test period described in paragraph (b)(4)(ii)(B) of this section.

(*3*) Section 471 costs incurred during the test period mean the section 471 costs described in § 1.263A–1(d)(2) that the taxpayer incurs during the test period described in paragraph (b)(4)(ii)(B) of this section.

(*B*) *Test period*—(1) *In general.* The test period is generally the three taxable-year period immediately prior to the taxable year that the historic absorption ratio is elected.

(*2*) *Updated test period.* The test period begins again with the beginning of the first taxable year after the close of a qualifying period. This new test period, the updated test period, is the three taxable-year period beginning with the first taxable year after the close of the qualifying period as defined in paragraph (b)(4)(ii)(C) of this section.

(C) *Qualifying period*—(*1*) *In general.* A qualifying period includes each of the first five taxable years beginning with the first taxable year after a test period (or an updated test period).

(*2*) *Extension of qualifying period.* In the first taxable year following the close of each qualifying period, (e.g., the sixth taxable year following the test period), the taxpayer must compute the actual absorption ratio under the simplified production method. If the actual absorption ratio computed for this taxable year (the recomputation year) is within one-half of one percentage point (plus or minus) of the historic absorption ratio used in determining capitalizable costs for the qualifying period (i.e., the previous five taxable years), the qualifying period is extended to include the recomputation year and the following five taxable years, and the taxpayer must continue to use the historic absorption ratio throughout the extended qualifying period. If, however, the actual absorption ratio computed for the recomputation year is not within one-half of one percentage point (plus or minus) of the historic absorption ratio, the taxpayer must use actual absorption ratios beginning with the recomputation year under the simplified production method and throughout the updated test period. The taxpayer must resume using the historic absorption ratio (determined with reference to the updated test period) in the third taxable year following the recomputation year.

(iii) *Method of accounting*—(A) *Adoption and use.* The election to use the historic absorption ratio is a method of accounting. A taxpayer using the simplified production method may elect the historic absorption ratio in any taxable year if permitted under this paragraph (b)(4), provided the taxpayer has not obtained the Commissioner's consent to revoke the historic absorption ratio election within its prior six taxable years. The election is to be effected on a cut-off basis, and thus, no adjustment under section 481(a) is required or permitted. The use of a historic absorption ratio has no effect on other methods of accounting adopted by the taxpayer and used in conjunction with the simplified production method in determining its section 263A costs. Accordingly, in computing its actual absorption ratios, the taxpayer must use the same methods of accounting used in computing its historic absorption ratio during its most recent test period unless the taxpayer obtains the consent of the Commissioner. Finally, for purposes of this paragraph (b)(4)(iii), the recomputation of the historic absorption ratio during an updated test period and the change from a historic absorption ratio to an actual absorption ratio by reason of the requirements of this paragraph (b)(4) are not considered changes in methods of accounting under section 446(e) and, thus, do not require the consent of the Commissioner or any adjustments under section 481(a).

(B) *Revocation of election.* A taxpayer may only revoke its election to use the historic absorption ratio with the consent of the Commissioner in a manner prescribed under section 446(e) and the regulations thereunder. Consent to the change for any taxable year that is included in the qualifying period (or an extended qualifying period) will be granted only upon a showing of unusual circumstances.

(iv) *Reporting and recordkeeping requirements*—(A) *Reporting.* A taxpayer making an election under this paragraph (b)(4) must attach a statement to its federal income tax return for the taxable year in which the election is made showing the actual absorption ratios determined under the simplified production method during its first test period. This statement must disclose the historic absorption ratio to be used by the taxpayer during its qualifying period. A similar statement must be attached to the federal income tax return for the first taxable year within any subsequent qualifying period (i.e., after an updated test period).

(B) *Recordkeeping.* A taxpayer must maintain all appropriate records and details supporting the historic absorption ratio until the expiration of the statute of limitations for the last year for which the taxpayer applied the particular historic absorption ratio in determining additional section 263A costs capitalized to eligible property.

(v) *Transition rules.* Taxpayers will be permitted to elect a historic absorption ratio in their first, second, or third taxable year beginning after December 31, 1993, under such terms and conditions as may be prescribed by the Commissioner. Taxpayers are eligible to make an election under these transition rules whether or not they previously used the simplified production method. A taxpayer making such an election must recompute (or compute) its additional section 263A costs, and thus, its historic absorption ratio for its first test period as if the rules prescribed in this section and §§ 1.263A–1 and 1.263A–3 had applied throughout the test period.

(vi) *Example.* The provisions of this paragraph (b)(4) are illustrated by the following example:

Example. (i) Taxpayer M uses the FIFO method of accounting for inventories and for 1994 elects to use the historic absorption ratio with the simplified production method. After recomputing its additional section 263A costs in accordance with the transition rules of paragraph (b)(4)(v) of this section, M identifies the following costs incurred during the test period:

1991:

Add'l section 263A costs—$100 Section 471 costs—$3,000

1992:

Add'l section 263A costs—200 Section 471 costs—$4,000

1993:

Add'l section 263A costs—300 Section 471 costs—$5,000

(ii) Therefore, M computes a 5% historic absorption ratio determined as follows:

$$\text{Historic absorption ratio} = \frac{\$100+200+300}{\$3{,}000+4{,}000+5{,}000} = \frac{\$600}{\$12{,}000} = 5\%$$

(iii) In 1994, M incurs $10,000 of section 471 costs of which $3,000 remain in inventory at the end of the year. Under the simplified production method using a historic absorption ratio, M determines the additional section 263A costs allocable to its ending inventory by multiplying its historic absorption ratio (5%) by the section 471 costs remaining in its ending inventory as follows:

$$\text{Additional section 263A costs} = 5\% \times \$3{,}000 = \$150$$

(iv) To determine its ending inventory under section 263A, M adds the additional section 263A costs allocable to ending inventory to its section 471 costs remaining in ending inventory ($3,150=$150+$3,000). The balance of M's additional section 263A costs incurred during 1994 is taken into account in 1994 as part of M's cost of goods sold.

(v) M's qualifying period ends with the close of its 1998 taxable year. Therefore, 1999 is a recomputation year in which M must compute its actual absorption ratio. M determines its actual absorption ratio for 1999 to be 5.25% and compares that ratio to its historic absorption ratio (5.0%). Therefore, M must continue to use its historic absorption ratio of 5.0% throughout an extended qualifying period, 1999 through 2004 (the recomputation year and the following five taxable years).

(vi) If, instead, M's actual absorption ratio for 1999 were not between 4.5% and 5.5%, M's qualifying period would end and M would be required to compute a new historic absorption ratio with reference to an updated test period of 1999, 2000, and 2001. Once M's historic absorption ratio is determined for the updated test period, it would be used for a new qualifying period beginning in 2002.

(c) *Additional simplified methods for producers.* The Commissioner may prescribe additional elective simplified methods by revenue ruling or revenue procedure.

(d) *Cross reference.* See § 1.6001–1(a) regarding the duty of taxpayers to keep such records as are sufficient to establish the amount of gross income, deductions, etc.

§ 1.263A–3 Rules relating to property acquired for resale.

(a) *Capitalization rules for property acquired for resale*—(1) *In general.* Section 263A applies to real property and personal property described in section 1221(1) acquired for resale by a retailer, wholesaler, or other taxpayer (reseller). However, section 263A does not apply to personal property described in section 1221(1) acquired for resale by a reseller whose average annual gross receipts for the three previous taxable years do not exceed § 10,000,000 (small reseller). For this purpose, personal property includes both tangible and intangible property. Property acquired for resale includes stock in trade of the taxpayer or other property which is includible in the taxpayer's inventory if on hand at the close of the taxable year, and property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. See, however, § 1.263A–1(b)(11) for an exception for certain de minimis property provided to customers incident to the provision of services.

(2) *Resellers with production activities*—(i) *In general.* Generally, a taxpayer must capitalize all direct costs and certain indirect costs associated with real property and tangible personal property it produces. See § 1.263A–2(a). Thus, except as provided in paragraphs (a)(2)(ii) and (3) of this section, a reseller, including a small reseller, that also produces property must capitalize the additional section 263A costs associated with any property it produces.

(ii) *Exception for small resellers.* Under this paragraph (a)(2)(ii), a small reseller is not required to capitalize additional section 263A costs associated with any personal property that is produced incident to its resale activities, provided the production activities are de minimis (within the meaning of paragraph (a)(2)(iii) of this section).

(iii) *De minimis production activities*—(A) *In general.* (*1*) In determining whether a taxpayer's production activities are de minimis, all facts and circumstances must be considered. For example, the taxpayer must consider the volume of the production activities in its trade or business. Production activities are presumed de minimis if—

(*i*) The gross receipts from the sale of the property produced by the reseller are less than 10 percent of the total gross receipts of the trade or business; and

(*ii*) The labor costs allocable to the trade or business' production activities are less than 10 percent of the reseller's total labor costs allocable to its trade or business.

(*2*) For purposes of this de minimis presumption, gross receipts has the same definition as provided in paragraph (b) of this section except that gross receipts are measured at the trade-or-business level rather than at the single-employer level.

(B) *Example.* The application of this paragraph (a)(2) may be illustrated by the following example:

Example—Small reseller with de minimis production activities. Taxpayer N is a small reseller in the retail grocery business whose average annual gross receipts for the three previous taxable years are less than § 10,000,000. N's grocery stores typically contain bakeries where customers may purchase baked goods produced by N. N's gross receipts from its bakeries are 5% of the entire grocery business. N's labor costs from its bakeries are 3% of its total labor costs allocable to the entire grocery business. Because both ratios are less than 10%, N's production activities are de minimis. Further, because N's production activities are incident to its resale activities, N is not required to capitalize any additional section 263A costs associated with its produced property.

(3) *Resellers with property produced under contract.* Generally, property produced for a taxpayer under a contract (within the meaning of § 1.263A–2(a)(1)(ii)(B)(*2*)) is treated as property produced by the taxpayer. See § 1.263A–2(a)(1)(ii)(B). However, a small reseller is not required to capitalize additional section 263A costs to personal property produced for it under contract with an unrelated person if the contract is entered into incident to the resale activities of the small reseller and the property is sold to its customers. For purposes of this paragraph, persons are related if they are described in section 267(b) or 707(b).

(4) *Use of the simplified resale method*—(i) *In general.* Except as provided in paragraphs (a)(4)(ii) and (iii) of this section, a taxpayer may elect the simplified production method (as described in § 1.263A–2(b)) but may not elect the simplified resale method (as described in paragraph (d) of this section) if the taxpayer is engaged in both production and resale activities with respect to the items of eligible property listed in § 1.263A–2(b)(2).

(ii) *Resellers with de minimis production activities.* A reseller otherwise permitted to use the simplified resale method in paragraph (d) of this section may use the simplified resale method if its production activities with respect to the items of eligible property listed in § 1.263A–2(b)(2) are de minimis (within the meaning of paragraph (a)(2)(iii) of this section) and incident to its resale of personal property described in section 1221(1).

(iii) *Resellers with property produced under a contract.* A reseller otherwise permitted to use the simplified resale method in paragraph (d) of this section may use the simplified resale method even though it has personal property produced for it (e.g., private label goods) under a contract with an unrelated person if the contract is entered into incident to its resale activities and the property is sold to its customers. For purposes of this paragraph (a)(4)(iii), persons are related if they are described in section 267(b) or 707(b).

(iv) *Application of simplified resale method.* A taxpayer that uses the simplified resale method and has de minimis production activities incident to its resale activities or property produced under contract must capitalize all costs allocable to eligible property produced using the simplified resale method.

(b) *Gross receipts exception for small resellers*—(1) *In general.* Section 263A does not apply to any personal property acquired for resale during any taxable year if the taxpayer's (or its predecessors') average annual gross receipts for the three previous taxable years (test period) do not exceed $10,000,000. However, taxpayers that acquire real property for resale are subject to section 263A with respect to real property regardless of their gross receipts. See section 263A(b)(2)(B).

(i) *Test period for new taxpayers.* For purposes of applying this exception, if a taxpayer has been in existence for less than three taxable years, the taxpayer determines its average annual gross receipts for the number of taxable years (including short taxable years) that the taxpayer (or its predecessor) has been in existence.

(ii) *Treatment of short taxable year.* In the case of a short taxable year, the taxpayer's gross receipts are annualized by—

(A) Multiplying the gross receipts of the short taxable year by 12; and

(B) Dividing the product determined in paragraph (b)(1)(ii)(A) of this section by the number of months in the short taxable year.

(2) *Definition of gross receipts*—(i) *In general.* Gross receipts are the total amount, as determined under the taxpayer's method of accounting, derived from all of the taxpayer's trades or businesses (e.g., revenues derived from the sale of inventory before reduction for cost of goods sold).

(ii) *Amounts excluded.* For purposes of this paragraph (b), gross receipts do not include amounts representing—

(A) Returns or allowances;

(B) Interest, dividends, rents, royalties, or annuities, not derived in the ordinary course of a trade or business;

(C) Receipts from the sale or exchange of capital assets, as defined in section 1221;

(D) Repayments of loans or similar instruments (e.g., a repayment of the principal amount of a loan held by a commercial lender);

(E) Receipts from a sale or exchange not in the ordinary course of business, such as the sale of an entire trade or business or the sale of property used in a trade or business as defined under section 1221(2); and

(F) Receipts from any activity other than a trade or business or an activity engaged in for profit.

(3) *Aggregation of gross receipts*—(i) *In general.* In determining gross receipts, all persons treated as a single employer under section 52(a) or (b), section 414(m), or any regulation prescribed under section 414 (or persons that would be treated as a single employer under any of these provisions if they had employees) shall be treated as one taxpayer. The gross receipts of a single employer (or the group) are determined by aggregating the gross receipts of all persons (or the members) of the group, excluding any gross receipts attributable to transactions occurring between group members.

(ii) *Single employer defined.* A controlled group, which is treated as a single employer under section 52(a), includes members of a controlled group within the meaning of section 1563(a), regardless of whether such members would be treated as component members of such group under section 1563(b). (See § 1.52–1(c).) Thus, for example, the gross receipts of a franchised corporation that is treated as an excluded member for purposes of section 1563(b) are included in the single employer's gross receipts under this aggregation rule, if such corporation and the taxpayer were members of the same controlled group under section 1563(a).

(iii) *Gross receipts of a single employer.* The gross receipts of a single employer for the test period include the gross receipts of all group members (or their predecessors) that are members of the group as of the first day of the taxable year in issue, regardless of whether such persons were members of the group for any of the three preceding taxable years. The gross receipts of the single employer for the test period do not, however, include the gross receipts of any member that was a group member (including any predecessor) for any or all of the three preceding taxable years, and is no longer a group member as of the first day of the taxable year in issue. Any group member that has a taxable year of less than 12 months must annualize its gross receipts in accordance with paragraph (b)(1)(ii) of this section.

(iv) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

Example 1. Subsidiary acquired during the taxable year. A parent corporation, (P), has owned 100% of the stock of another corporation, (S1), continually since 1989. P and S1 are calendar year taxpayers. S1 acquires property for resale. On January 1, 1994, P acquires 100% of the stock of another calendar year corporation (S2). In determining whether S1's resale activities are subject to the provisions of section 263A for 1994, the gross receipts of P, S1, and S2 for 1991, 1992, and 1993 are aggregated, excluding the gross receipts, if any, attributable to transactions occurring between the three corporations.

Example 2. Subsidiary sold during the taxable year. Since 1989, a parent corporation, (P), has continually owned 100% of the stock of two other corporations, (S1) and (S2). The three corporations are calendar year taxpayers. S1 acquires property for resale. On December 31, 1993, P sells all of its stock in S2. In determining whether S1's resale activities are subject to the provisions of section 263A for 1994, only the gross receipts of P and S1 for 1991, 1992, and 1993 must be aggregated, excluding the gross receipts, if any, attributable to transactions occurring between the two corporations.

(c) *Purchasing, handling, and storage costs*—(1) *In general.* Generally, § 1.263A–1(e) describes the types of costs that must be capitalized by taxpayers. Resellers must capitalize the acquisition cost of property acquired for resale, as well as indirect costs described in § 1.263A–1(e)(3), which are

properly allocable to property acquired for resale. The indirect costs most often incurred by resellers are purchasing, handling, and storage costs. This paragraph (c) provides additional guidance regarding each of these categories of costs. As provided in § 1.263A–1(e), this paragraph (c) also applies to producers incurring purchasing, handling, and storage costs.

(2) *Costs attributable to purchasing, handling, and storage.* The costs attributable to purchasing, handling, and storage activities generally consist of direct and indirect labor costs (including the costs of pension plans and other fringe benefits); occupancy expenses including rent, depreciation, insurance, security, taxes, utilities and maintenance; materials and supplies; rent, maintenance, depreciation, and insurance of vehicles and equipment; tools; telephone; travel; and the general and administrative costs that directly benefit or are incurred by reason of the taxpayer's activities.

(3) *Purchasing costs*—(i) *In general.* Purchasing costs are costs associated with operating a purchasing department or office within a trade or business, including personnel costs (e.g., of buyers, assistant buyers, and clerical workers), relating to—

(A) The selection of merchandise;

(B) The maintenance of stock assortment and volume;

(C) The placement of purchase orders;

(D) The establishment and maintenance of vendor contacts; and

(E) The comparison and testing of merchandise.

(ii) *Determination of whether personnel are engaged in purchasing activities.* The determination of whether a person is engaged in purchasing activities is based upon the activities performed by that person and not upon the person's title or job classification. Thus, for example, although an employee's job function may be described in such a way as to indicate activities outside the area of purchasing (e.g., a marketing representative), such activities must be analyzed on the basis of the activities performed by that employee. If a person performs both purchasing and non-purchasing activities, the taxpayer must reasonably allocate the person's labor costs between these activities. For example, a reasonable allocation is one based on the amount of time the person spends on each activity.

(A) *⅓–⅔ rule for allocating labor costs.* A taxpayer may elect the ⅓–⅔ rule for allocating labor costs of persons performing both purchasing and non-purchasing activities. If elected, the taxpayer must allocate the labor costs of all such persons using the ⅓–⅔ rule. Under this rule—

(*1*) If less than one-third of a person's activities are related to purchasing, none of that person's labor costs are allocated to purchasing;

(*2*) If more than two-thirds of a person's activities are related to purchasing, all of that person's labor costs are allocated to purchasing; and

(*3*) In all other cases, the taxpayer must reasonably allocate labor costs between purchasing and non-purchasing activities.

(B) *Example.* The application of paragraph (c)(3)(ii)(A) of this section may be illustrated by the following example:

Example. Taxpayer O is a reseller that employs three persons, A, B, and C, who perform both purchasing and non-purchasing activities. These persons spend the following time performing purchasing activities: A–25 %; B–70 %; and C–50 %. Under the ⅓–⅔ rule, Taxpayer O treats none of A's labor costs as purchasing costs, all of B's labor costs as purchasing costs, and Taxpayer O allocates 50 % of C's labor costs as purchasing costs.

(4) *Handling costs*—(i) *In general.* Handling costs include costs attributable to processing, assembling, repackaging, transporting, and other similar activities with respect to property acquired for resale, provided the activities do not come within the meaning of the term produce as defined in § 1.263A–2(a)(1). Handling costs are generally required to be capitalized under section 263A. Under this paragraph (c)(4)(i), however, handling costs incurred at a retail sales facility (as defined in paragraph (c)(5)(ii)(B) of this section) with respect to property sold to retail customers at the facility are not required to be capitalized. Thus, for example, handling costs incurred at a retail sales facility to unload, unpack, mark, and tag goods sold to retail customers at the facility are not required to be capitalized. In addition, handling costs incurred at a dual-function storage facility (as defined in paragraph (c)(5)(ii)(G) of this section) with respect to property sold to customers from the facility are not required to be capitalized to the extent that the costs are incurred with respect to property sold in on-site sales. Handling costs attributable to property sold to customers from a dual-function storage facility in on-site sales are determined by applying the ratio in paragraph (c)(5)(iii)(B) of this section.

(ii) *Processing costs.* Processing costs are the costs a reseller incurs in making minor changes or alterations to the nature or form of a product acquired for resale. Minor changes to a product include, for example, monogramming a sweater, altering a pair of pants, and other similar activities.

(iii) *Assembling costs.* Generally, assembling costs are costs associated with incidental activities that are necessary in readying property for resale (e.g., attaching wheels and handlebars to a bicycle acquired for resale).

(iv) *Repackaging costs.* Repackaging costs are the costs a taxpayer incurs to package property for sale to its customers.

(v) *Transportation costs.* Generally, transportation costs are the costs a taxpayer incurs moving or shipping property acquired for resale. These costs include the cost of dispatching trucks; loading and unloading shipments; and sorting, tagging, and marking property. Transportation costs may consist of depreciation on trucks and equipment and the costs of fuel, insurance, labor, and similar costs. Generally, transportation costs required to be capitalized include costs incurred in transporting property—

(A) From the vendor to the taxpayer;

(B) From one of the taxpayer's storage facilities to another of its storage facilities;

(C) From the taxpayer's storage facility to its retail sales facility;

(D) From the taxpayer's retail sales facility to its storage facility; and

(E) From one of the taxpayer's retail sales facilities to another of its retail sales facilities.

(vi) *Costs not considered handling costs*—(A) *Distribution costs.* [Reserved]

(B) *Delivery of custom-ordered items.* [Reserved]

(C) *Repackaging after sale occurs.* [Reserved]

(5) *Storage costs*—(i) *In general.* Generally, storage costs are capitalized under section 263A to the extent they are attributable to the operation of an off-site storage or warehousing facility (an off-site storage facility). However, storage costs attributable to the operation of an on-site storage facility (as defined in paragraph (c)(5)(ii)(A) of this section) are not required to be capitalized under section 263A. Storage costs attributable to a dual-function storage facility (as defined in paragraph (c)(5)(ii)(G) of this section) must be capitalized to the extent that the facility's costs are allocable to off-site storage.

(ii) *Definitions*—(A) *On-site storage facility.* An on-site storage facility is defined as a storage or warehousing facility that is physically attached to, and an integral part of, a retail sales facility.

(B) *Retail sales facility.* (1) A retail sales facility is defined as a facility where a taxpayer sells merchandise

exclusively to retail customers in on-site sales. For this purpose, a retail sales facility includes those portions of any specific retail site—

(*i*) Which are customarily associated with and are an integral part of the operations of that retail site;

(*ii*) Which are generally open each business day exclusively to retail customers;

(*iii*) On or in which retail customers normally and routinely shop to select specific items of merchandise; and

(*iv*) Which are adjacent to or in immediate proximity to other portions of the specific retail site.

(*2*) Thus, for example, two lots of an automobile dealership physically separated by an alley or an access road would generally be considered one retail sales facility, provided customers routinely shop on both of the lots to select the specific automobiles that they wish to acquire.

(C) *An integral part of a retail sales facility.* A storage facility is considered an integral part of a retail sales facility when the storage facility is an essential and indispensable part of the retail sales facility. For example, if the storage facility is used exclusively for filling orders or completing sales at the retail sales facility, the storage facility is an integral part of the retail sales facility.

(D) *On-site sales.* On-site sales are defined as sales made to retail customers physically present at a facility. For example, mail order and catalog sales are made to customers not physically present at the facility, and thus, are not on-site sales.

(E) *Retail customer—(1) In general.* A retail customer is defined as the final purchaser of the merchandise. A retail customer does not include a person who resells the merchandise to others, such as a contractor or manufacturer that incorporates the merchandise into another product for sale to customers.

(*2*) *Certain non-retail customers treated as retail customers.* For purposes of this section, a non-retail customer is treated as a retail customer with respect to a particular facility if the following requirements are satisfied—

(*i*) The non-retail customer purchases goods under the same terms and conditions as are available to retail customers (e.g., no special discounts);

(*ii*) The non-retail customer purchases goods in the same manner as a retail customer (e.g., the non-retail customer may not place orders in advance and must come to the facility to examine and select goods);

(*iii*) Retail customers shop at the facility on a routine basis (i.e., on most business days), and no special days or hours are reserved for non-retail customers; and

(*iv*) More than 50 percent of the gross sales of the facility are made to retail customers.

(F) *Off-site storage facility.* An off-site storage facility is defined as a storage facility that is not an on-site storage facility.

(G) *Dual-function storage facility.* A dual-function storage facility is defined as a storage facility that serves as both an off-site storage facility and an on-site storage facility. For example, a dual-function storage facility would include a regional warehouse that serves the taxpayer's separate retail sales outlets and also contains a sales outlet therein. A dual-function storage facility also includes any facility where sales are made to retail customers in on-site sales and to—

(*1*) Retail customers in sales that are not on-site sales; or

(*2*) Other customers.

(iii) *Treatment of storage costs incurred at a dual-function storage facility*—(A) *In general.* Storage costs associated with a dual-function storage facility must be allocated between the off-site storage function and the on-site storage function. To the extent that the dual-function storage facility's storage costs are allocable to the off-site storage function, they must be capitalized. To the extent that the dual-function storage facility's storage costs are allocable to the on-site storage function, they are not required to be capitalized.

(B) *Dual-function storage facility allocation ratio—(1) In general.* Storage costs associated with a dual-function storage facility must be allocated between the off-site storage function and the on-site storage function using the ratio of—

(*i*) Gross on-site sales of the facility (i.e., gross sales of the facility made to retail customers visiting the premises in person and purchasing merchandise stored therein); to

(*ii*) Total gross sales of the facility. For this purpose, the total gross sales of the facility include the value of items shipped to other facilities of the taxpayer.

(*2*) *Illustration of ratio allocation.* For example, if a dual-function storage facility's on-site sales are 40 percent of the total gross sales of the facility, then 40 percent of the facility's storage costs are allocable to the on-site storage function and are not required to be capitalized under section 263A.

(*3*) *Appropriate adjustments for other uses of a dual-function storage facility.* Prior to computing the allocation ratio in paragraph (c)(5)(iii)(B) of this section, a taxpayer must apply the principles of paragraph (c)(5)(iv) of this section in determining the portion of the facility that is a dual-function storage facility (and the costs attributable to such portion).

(C) *De minimis 90–10 rule for dual-function storage facilities.* If 90 percent or more of the costs of a facility are attributable to the on-site storage function, the entire storage facility is deemed to be an on-site storage facility. In contrast, if 10 percent or less of the costs of a storage facility are attributable to the on-site storage function, the entire storage facility is deemed to be an off-site storage facility.

(iv) *Costs not attributable to an off-site storage facility.* To the extent that costs incurred at an off-site storage facility are not properly allocable to the taxpayer's storage function, the costs are not accounted for as off-site storage costs. For example, if a taxpayer has an office attached to its off-site storage facility where work unrelated to the storage function is performed, such as a sales office, costs associated with this office are not off-site storage costs. However, if a taxpayer uses a portion of an off-site storage facility in a manner related to the storage function, for example, to store equipment or supplies that are not offered for sale to customers, costs associated with this portion of the facility are off-site storage costs.

(v) *Examples.* The provisions of this paragraph (c)(5) are illustrated by the following examples:

Example 1. Catalog or mail order center. Taxpayer P operates a mail order catalog business. As part of its business, P stores merchandise for shipment to customers who purchase the merchandise through orders placed by telephone or mail. P's storage facility is not an on-site storage facility because no on-site sales are made at the facility.

Example 2. Pooled-stock facility. Taxpayer Q maintains a pooled-stock facility, which functions as a back-up regional storage facility for Q's retail sales outlets in the nearby area. Q's pooled stock facility is an off-site storage facility because it is neither physically attached to nor an integral part of a retail sales facility.

Example 3. Wholesale warehouse. Taxpayer R operates a wholesale warehouse where wholesale sales are made to customers physically present at the facility. R's customers resell the goods they purchase from R to final retail customers. Because no retail sales are conducted at the facility, all storage costs attributable to R's wholesale warehouse must be capitalized.

(d) *Simplified resale method—(1) Introduction.* This paragraph (d) provides a simplified method for determining the additional section 263A costs properly allocable to property

acquired for resale and other eligible property on hand at the end of the taxable year.

(2) *Eligible property.* Generally, the simplified resale method is only available to a trade or business exclusively engaged in resale activities. However, certain resellers with property produced as a result of de minimis production activities or property produced under contract may elect the simplified resale method, as described in paragraph (a)(4) of this section. Eligible property for purposes of the simplified resale method, therefore, includes any real or personal property described in section 1221(1) that is acquired for resale and any eligible property (within the meaning of § 1.263A–2(b)(2)) that is described in paragraph (a)(4) of this section.

(3) *Simplified resale method without historic absorption ratio election*—(i) *General allocation formula*—(A) *In general.* Under the simplified resale method, the additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year are computed as follows:

$$\text{Combined absorption ratio} \times \text{section 471 costs remaining on hand at year end}$$

(B) *Effect of allocation.* The resulting product under the general allocation formula is the additional section 263A costs that are added to the taxpayer's ending section 471 costs to determine the section 263A costs that are capitalized.

(C) *Definitions*—(*1*) *Combined absorption ratio.* The combined absorption ratio is defined as the sum of the storage and handling costs absorption ratio as defined in paragraph (d)(3)(i)(D) of this section and the purchasing costs absorption ratio as defined in paragraph (d)(3)(i)(E) of this section.

(*2*) *Section 471 costs remaining on hand at year end.* Section 471 costs remaining on hand at year end are generally mean the section 471 costs, as defined in § 1.263A–1(d)(2), that the taxpayer incurs during its current taxable year, which remain in its ending inventory or are otherwise on hand at year end. For LIFO inventories of a taxpayer, the section 471 costs remaining on hand at year end means the increment, if any, for the current year stated in terms of section 471 costs. See paragraph (d)(3)(ii) of this section for special rules applicable to LIFO taxpayers. Except as otherwise provided in this section or in § 1.263A–1 or 1.263A–2, additional section 263A costs that are allocated to inventories on hand at the close of the taxable year under the simplified resale method of this paragraph (d) are treated as inventory costs for all purposes of the Internal Revenue Code.

(D) *Storage and handling costs absorption ratio.*

(*1*) Under the simplified resale method, the storage and handling costs absorption ratio is determined as follows:

$$\frac{\text{Current year's storage and handling costs}}{\text{Beginning inventory plus current year's purchases}}$$

(*2*) Current year's storage and handling costs are defined as the total storage costs plus the total handling costs incurred during the taxable year that relate to the taxpayer's property acquired for resale and other eligible property. See paragraph (c) of this section, which discusses storage and handling costs. Storage and handling costs must include the amount of allocable mixed service costs as described in paragraph (d)(3)(i)(F) of this section. Beginning inventory in the denominator of the storage and handling costs absorption ratio refers to the section 471 costs of any property acquired for resale or other eligible property held by the taxpayer as of the beginning of the taxable year. Current year's purchases generally mean the taxpayer's section 471 costs incurred with respect to purchases of property acquired for resale during the current taxable year. In computing the denominator of the storage and handling costs absorption ratio, a taxpayer using a dollar-value LIFO method of accounting, must state beginning inventory amounts using the LIFO carrying value of the inventory and not current-year dollars.

(E) *Purchasing costs absorption ratio.* (*1*) Under the simplified resale method, the purchasing costs absorption ratio is determined as follows:

$$\frac{\text{Current year's purchasing costs}}{\text{Current year's purchases}}$$

(*2*) Current year's purchasing costs are defined as the total purchasing costs incurred during the taxable year that relate to the taxpayer's property acquired for resale and eligible property. See paragraph (c)(3) of this section, which discusses purchasing costs. Purchasing costs must include the amount of allocable mixed service costs determined in paragraph (d)(3)(i)(F) of this section. Current year's purchases generally mean the taxpayer's section 471 costs incurred with respect to purchases of property acquired for resale during the current taxable year.

(F) *Allocable mixed service costs.* (*1*) If a taxpayer allocates its mixed service costs to purchasing costs, storage costs, and handling costs using a method described in § 1.263A–1(g)(4), the taxpayer is not required to determine its allocable mixed service costs under this paragraph (d)(3)(i)(F). However, if the taxpayer uses the simplified service cost method, the amount of mixed service costs allocated to and included in purchasing costs, storage costs, and handling costs in the absorption ratios in paragraphs (d)(3)(i) (D) and (E) of this section is determined as follows:

$$\frac{\text{Labor costs allocable to activity}}{\text{Total labor costs}} \times \text{Total mixed service costs}$$

(2) Labor costs allocable to activity are defined as the total labor costs allocable to each particular activity (i.e., purchasing, handling, and storage), excluding labor costs included in mixed service costs. Total labor costs are defined as the total labor costs (excluding labor costs included in mixed service costs) that are incurred in the taxpayer's trade or business during the taxable year. See § 1.263A–1(h)(6) for the definition of total mixed service costs.

(ii) *LIFO taxpayers electing simplified resale method*—(A) *In general.* Under the simplified resale method, a taxpayer using a LIFO method must calculate a particular year's index (e.g., under § 1.472–8(e)) without regard its additional section 263A costs. Similarly, a taxpayer that adjusts current-year costs by applicable indexes to determine whether there has been an inventory increment or decrement in the current year for a particular LIFO pool must disregard the additional section 263A costs in making that determination.

(B) *LIFO increment.* If the taxpayer determines there has been an inventory increment, the taxpayer must state the amount of the increment in current-year dollars (stated in terms of section 471 costs). The taxpayer then multiplies this amount by the combined absorption ratio. The resulting product is the additional section 263A costs that must be added to the taxpayer's increment for the year stated in terms of section 471 costs.

(C) *LIFO decrement.* If the taxpayer determines there has been an inventory decrement, the taxpayer must state the amount of the decrement in dollars applicable to the particular year for which the LIFO layer has been invaded. The additional section 263A costs incurred in prior years that are applicable to the decrement are charged to cost of goods sold. The additional section 263A costs that are applicable to the decrement are determined by multiplying the additional section 263A costs allocated to the layer of the pool in which the decrement occurred by the ratio of the decrement (excluding additional section 263A costs) to the section 471 costs in the layer of that pool.

(iii) *Permissible variations of the simplified resale method.* The following variations of the simplified resale method are permitted:

(A) The exclusion of beginning inventories from the denominator in the storage and handling costs absorption ratio formula in paragraph (d)(3)(i)(D) of this section; or

(B) Multiplication of the storage and handling costs absorption ratio in paragraph (d)(3)(i)(D) of this section by the total of section 471 costs included in a LIFO taxpayer's ending inventory (rather than just the increment, if any, experienced by the LIFO taxpayer during the taxable year) for purposes of determining capitalizable storage and handling costs.

(iv) *Examples.* The provisions of this paragraph (d)(3) are illustrated by the following examples:

Example 1. FIFO inventory method. (i) Taxpayer S uses the FIFO method of accounting for inventories. S's beginning inventory for 1994 (all of which was sold during 1994) was $2,100,000 (consisting of $2,000,000 of section 471 costs and $100,000 of additional section 263A costs). During 1994, S makes purchases of $10,000,000. In addition, S incurs purchasing costs of $460,000, storage costs of $110,000, and handling costs of $90,000. S's purchases (section 471 costs) remaining in ending inventory at the end of 1994 are $3,000,000.

(ii) In 1994, S incurs $400,000 of total mixed service costs and $1,000,000 of total labor costs (excluding labor costs included in mixed service costs). In addition, S incurs the following labor costs (excluding labor costs included in mixed service costs): purchasing—$100,000, storage—$200,000, and handling—$200,000. Accordingly, the following mixed service costs must be included in purchasing costs, storage costs, and handling costs as capitalizable mixed service costs: purchasing— $40,000 ([$100,000 divided by $1,000,000] multiplied by $400,000); storage—$80,000 ([$200,000 divided by $1,000,000] multiplied by $400,000); and handling— $80,000 ([$200,000 divided by $1,000,000] multiplied by $400,000).

(iii) S computes its purchasing costs absorption ratio for 1994 as follows:

$$\frac{\text{1994 purchasing costs}}{\text{1994 purchases}} = \frac{\$460{,}000 + \$40{,}000}{\$10{,}000{,}000} = \frac{\$500{,}000}{\$10{,}000{,}000} = 5.0\%$$

(iv) S computes its storage and handling costs absorption ratio for 1994 as follows:

$$\frac{\text{Storage and handling costs}}{\text{Beginning inventory plus 1994 purchases}} = \frac{(\$110{,}000 + \$80{,}000) + (\$90{,}000 + \$80{,}000)}{\$2{,}000{,}000 + \$10{,}000{,}000}$$

$$= \frac{\$190{,}000 + \$170{,}000}{\$12{,}000{,}000}$$

$$= \frac{\$360{,}000}{\$12{,}000{,}000}$$

$$= 3.0\%$$

(v) S's combined absorption ratio is 8.0 %, or the sum of the purchasing costs absorption ratio (5.0 %) and the storage and handling costs absorption ratio (3.0 %). Under the simplified resale method, S determines the additional section 263A costs allocable to its ending inventory by multiplying the combined absorption ratio by its section 471 costs with respect to current year's purchases remaining in ending inventory:

$$\text{Additional section 263A costs} = 8.0\% \times \$3{,}000{,}000 = \$240{,}000$$

(vi) S adds this $240,000 to the $3,000,000 of purchases remaining in its ending inventory to determine its total ending FIFO inventory of $3,240,000.

Example 2. LIFO inventory method. (i) Taxpayer T uses a dollar-value LIFO inventory method. T's beginning inventory for 1994 is $2,100,000 (consisting of $2,000,000 of section 471 costs and $100,000 of additional section 263A costs). During 1994, T makes purchases of $10,000,000. In addition, T incurs purchasing costs of $460,000, storage costs of $110,000, and handling costs of $90,000. T's 1994 LIFO increment is $1,000,000 ($3,000,000 of section 471 costs in ending inventory less $2,000,000 of section 471 costs in beginning inventory).

(ii) In 1994, T incurs $400,000 of total mixed service costs and $1,000,000 of total labor costs (excluding labor costs included in mixed service costs). In addition, T incurs the following labor costs (excluding labor costs included in mixed service costs): purchasing—$100,000, storage—$200,000, and handling—$200,000. Accordingly, the following mixed service costs must be included in purchasing costs, storage costs, and handling costs as capitalizable mixed service costs: purchasing—$40,000 ([$100,000 divided by $1,000,000] multiplied by $400,000); storage— $80,000 ([$200,000 divided by $1,000,000] multiplied by $400,000); and handling— $80,000 ([$200,000 divided by $1,000,000] multiplied by $400,000).

(iii) Based on these facts, T determines that it has a combined absorption ratio of 8.0 %. To determine the additional section 263A costs allocable to its ending inventory, T multiplies its combined absorption ratio (8.0 %) by the $1,000,000 LIFO increment. Thus, T's additional section 263A costs allocable to its ending inventory are $80,000 ($1,000,000 multiplied by 8.0 %). This $80,000 is added to the $1,000,000 to determine a total 1994 LIFO increment of $1,080,000. T's ending inventory is $3,180,000 (its beginning inventory of $2,100,000 plus the $1,080,000 increment).

(iv) In 1995, T sells one-half of the inventory in its 1994 LIFO increment. T must include in its cost of goods sold for 1995 the amount of additional section 263A costs relating to this inventory, i.e., one-half of the $80,000 additional section 263A costs capitalized in 1994 ending inventory, or $40,000.

Example 3. LIFO Pools. (i) Taxpayer U begins its business in 1994, and adopts the LIFO inventory method. During 1994, U makes purchases of $10,000, and incurs $400 of purchasing costs, $350 of storage costs and $250 of handling costs. U's purchasing costs, storage costs, and handling costs include their proper allocable share of mixed service costs.

(ii) U computes its purchasing costs absorption ratio for 1994, as follows:

$$\frac{\text{1994 purchasing costs}}{\text{1994 purchases}} = \frac{\$400}{\$10{,}000}$$

$$= 4.0\%$$

(iii) U computes its storage and handling costs absorption ratio for 1994, as follows:

$$\frac{\text{1994 storage and handling costs}}{\text{Beginning inventory plus 1994 purchases}} = \frac{\$350 + \$250}{\$0 + \$10{,}000}$$

$$= \frac{\$600}{\$10{,}000}$$

$$= 6.0\%$$

(iv) U's combined absorption ratio is 10%, or the sum of the purchasing costs absorption ratio (4.0%) and the storage and handling costs absorption ratio (6.0%). At the end of 1994, U's ending inventory included $3,000 of current year purchases, contained in three LIFO pools (X, Y, and Z) as shown below. Under the simplified resale method, U computes its ending inventory for 1994 as follows:

1994	Total	X	Y	Z
Ending section 471 costs	$3,000	$1,600	$600	$800
Additional section 263A costs (10%)	300	160	60	80
1994 ending inventory	3,300	1,760	660	880

(v) During 1995, U makes purchases of $2,000 as shown below, and incurs $200 of purchasing costs, $325 of storage costs and $175 of handling costs. U's purchasing costs, storage costs, and handling costs include their proper share of mixed service costs. Moreover, U sold goods from pools X, Y, and Z having a total cost of $1,000. U computes its ending inventory for 1995 as follows.

(vi) U computes its purchasing costs absorption ratio for 1995:

$$\frac{\text{1995 purchasing costs}}{\text{1995 purchases}} = \frac{\$200}{\$2{,}000} = 10.0\%$$

(vii) U computes its storage and handling costs absorption ratio for 1995:

$$\frac{\text{1995 storage and handling costs}}{\text{Beginning inventory plus 1995 purchases}} = \frac{\$325+\$175}{\$3{,}000+\$2{,}000} = \frac{\$500}{\$5{,}000} = 10.0\%$$

(viii) U's combined absorption ratio is 20.0%, or the sum of the purchasing costs absorption ratio (10.0%) and the storage and handling costs absorption ratio (10.0%).

1995	Total	X	Y	Z
Beginning section 471 costs	$3,000	$1,600	$600	$800
1995 section 471 costs	2,000	1,500	300	200
Section 471 cost of goods sold	(1,000)	(300)	(300)	(400)
1995 ending section 471 costs	4,000	2,800	600	600
Consisting of:				
1994 layer	2,800	1,600	600	600
1995 layer	1,200	1,200	.....	.....
	4,000	2,800	600	600
Additional section 263A costs:				
1994 (10%)	280	160	60	60
1995 (20%)	240	240	.....	.....
	520	400	60	60
1995 ending inventory	4,520	3,200	660	660

(ix) In 1995, U experiences a $200 decrement in Pool Z. Thus, U must charge the additional section 263A costs incurred in prior years applicable to the decrement to 1995's cost of goods sold. To do so, U determines a ratio by dividing the decrement by the section 471 costs in the 1994 layer ($200 divided by $800, or 25%). U then multiplies this ratio (25%) by the additional section 263A costs in the 1994 layer ($80) to determine the additional section 263A costs applicable to the decrement ($20). Therefore, $20 is taken into account by U in 1995 as part of its cost of goods sold ($80 multiplied by 25%).

(4) *Simplified resale method with historic absorption ratio election*—(i) *In general.* This paragraph (d)(4) permits resellers using the simplified resale method to elect a historic absorption ratio in determining additional section 263A costs allocable to eligible property remaining on hand at the close of their taxable years. Except as provided in paragraph (d)(4)(v) of this section, a taxpayer may only make a historic absorption ratio election if it has used the simplified resale method for three or more consecutive taxable years immediately prior to the year of election. The historic absorption ratio is used in lieu of an actual combined absorption ratio computed under paragraph (d)(3)(i)(C)(*1*) of this section and is based on costs capitalized by a taxpayer during its test period. If elected, the historic absorption ratio must be used for the qualifying period described in paragraph (d)(4)(ii)(C) of this section.

(ii) *Operating rules and definitions*—(A) *Historic absorption ratio.* (*1*) The historic absorption ratio is equal to the following ratio:

$$\frac{\text{Additional section 263A costs incurred during the test period}}{\text{Section 471 costs incurred during the test period}}$$

(*2*) Additional section 263A costs incurred during the test period are defined as the sum of the products of the combined absorption ratios (defined in paragraph (d)(3)(i)(C)(*1*) of this section) multiplied by a taxpayer's section 471 costs incurred with respect to purchases, for each taxable year of the test period.

(*3*) Section 471 costs incurred during the test period mean the section 471

costs described in § 1.263A–1(d)(2) that a taxpayer incurs generally with respect to its purchases during the test period described in paragraph (d)(4)(ii)(B) of this section.

(B) *Test period*—(*1*) *In general.* The test period is generally the three taxable-year period immediately prior to the taxable year that the historic absorption ratio is elected.

(*2*) *Updated test period.* The test period begins again with the beginning of the first taxable year after the close of a qualifying period (as defined in paragraph (d)(4)(ii)(C) of this section). This new test period, the updated test period, is the three taxable-year period beginning with the first taxable year after the close of the qualifying period.

(C) *Qualifying period*—(*1*) *In general.* A qualifying period includes each of the first five taxable years beginning with the first taxable year after a test period (or updated test period).

(*2*) *Extension of qualifying period.* In the first taxable year following the close of each qualifying period (e.g., the sixth taxable year following the test period), the taxpayer must compute the actual combined absorption ratio under the simplified resale method. If the actual combined absorption ratio computed for this taxable year (the recomputation year) is within one-half of one percentage point (plus or minus) of the historic absorption ratio used in determining capitalizable costs for the qualifying period (i.e., the previous five taxable years), the qualifying period must be extended to include the recomputation year and the following five taxable years, and the taxpayer must continue to use the historic absorption ratio throughout the extended qualifying period. If, however, the actual combined absorption ratio computed for the recomputation year is not within one-half of one percentage point (plus or minus) of the historic absorption ratio, the taxpayer must use actual combined absorption ratios beginning with the recomputation year under the simplified resale method and throughout the updated test period. The taxpayer must resume using the historic absorption ratio (determined with reference to the updated test period) in the third taxable year following the recomputation year.

(iii) *Method of accounting*—(A) *Adoption and use.* The election to use the historic absorption ratio is a method of accounting. A taxpayer using the simplified resale method may elect the historic absorption ratio in any taxable year if permitted under this paragraph (d)(4), provided the taxpayer has not obtained the Commissioner's consent to revoke the historic absorption ratio election within its prior six taxable years. The election is to be effected on a cut-off basis, and thus, no adjustment under section 481(a) is required or permitted. The use of a historic absorption ratio has no effect on other methods of accounting adopted by the taxpayer and used in conjunction with the simplified resale method in determining its section 263A costs. Accordingly, in computing its actual combined absorption ratios, the taxpayer must use the same methods of accounting used in computing its historic absorption ratio during its most recent test period unless the taxpayer obtains the consent of the Commissioner. Finally, for purposes of this paragraph (d)(4)(iii)(A), the recomputation of the historic absorption ratio during an updated test period and the change from a historic absorption ratio to an actual combined absorption ratio during an updated test period by reason of the requirements of this paragraph (d)(4) are not considered changes in methods of accounting under section 446(e) and, thus, do not require the consent of the Commissioner or any adjustments under section 481(a).

(B) *Revocation of election.* A taxpayer may only revoke its election to use the historic absorption ratio with the consent of the Commissioner in a manner prescribed under section 446(e) and the regulations thereunder. Consent to the change for any taxable year that is included in the qualifying period (or an extended qualifying period) will be granted only upon a showing of unusual circumstances.

(iv) *Reporting and recordkeeping requirements*—(A) *Reporting.* A taxpayer making an election under this paragraph (d)(4) must attach a statement to its federal income tax return for the taxable year in which the election is made showing the actual combined absorption ratios determined under the simplified resale method during its first test period. This statement must disclose the historic absorption ratio to be used by the taxpayer during its qualifying period. A similar statement must be attached to the federal income tax return for the first taxable year within any subsequent qualifying period (i.e., after an updated test period).

(B) *Recordkeeping.* A taxpayer must maintain all appropriate records and details supporting the historic absorption ratio until the expiration of the statute of limitations for the last year for which the taxpayer applied the particular historic absorption ratio in determining additional section 263A costs capitalized to eligible property.

(v) *Transition rules.* Taxpayers will be permitted to elect a historic absorption ratio in their first, second, or third taxable year beginning after December 31, 1993, under such terms and conditions as may be prescribed by the Commissioner. Taxpayers are eligible to make an election under these transition rules whether or not they previously used the simplified resale method. A taxpayer making such an election must recompute (or compute) its additional section 263A costs, and thus, its historic absorption ratio for its first test period as if the rules prescribed in this section and §§ 1.263A–1 and 1.263A–2 had applied throughout the test period.

(vi) *Example.* The provisions of this paragraph (d)(4) are illustrated by the following example:

Example. (i) Taxpayer V uses the FIFO method of accounting for inventories and in 1994 elects to use the historic absorption ratio with the simplified resale method. After recomputing its additional section 263A costs in accordance with the transition rules of paragraph (d)(4)(v) of this section, V identifies the following costs incurred during the test period:

1991:
Add'l section 263A costs—$100
Section 471 costs—$3,000

1992:
Add'l section 263A costs—200
Section 471 costs—4,000

1993:
Add'l section 263A costs—300
Section 471 costs—5,000

(ii) Therefore, V computes a 5% historic absorption ratio determined as follows:

$$\text{Historic absorption ratio} = \frac{\$100 + 200 + 300}{\$3{,}000 + 4{,}000 + 5{,}000} = \frac{\$600}{\$12{,}000} = 5\%$$

(iii) In 1994, V incurs $10,000 of section 471 costs of which $3,000 remain in inventory at the end of the year. Under the simplified resale method using a historic absorption ratio, V determines the additional section 263A costs allocable to its ending inventory by multiplying its historic ratio (5%) by the section 471 costs remaining in its ending inventory:

$$\text{Additional section 263A costs} = 5\% \times \$3{,}000 = \$150$$

(iv) To determine its ending inventory under section 263A, V adds the additional section 263A costs allocable to ending inventory to its section 471 costs remaining in ending inventory ($3,150=$150+$3,000). The balance of V's additional section 263A costs incurred during 1994 is taken into account in 1994 as part of V's cost of goods sold.

(v) V's qualifying period ends as of the close of its 1998 taxable year. Therefore, 1999 is a recomputation year in which V must compute its actual combined absorption ratio. V determines its actual absorption ratio for 1999 to be 5.25% and compares that ratio to its historic absorption ratio (5.0%). Therefore, V must continue to use its historic absorption ratio of 5.0% throughout an extended qualifying period, 1999 through 2004 (the recomputation year and the following five taxable years).

(vi) If, instead, V's actual combined absorption ratio for 1999 were not between 4.5% and 5.5%, V's qualifying period would end and V would be required to compute a new historic absorption ratio with reference to an updated test period of 1999, 2000, and 2001. Once V's historic absorption ratio is determined for the updated test period, it would be used for a new qualifying period beginning in 2002.

(5) *Additional simplified methods for resellers.* The Commissioner may prescribe additional elective simplified methods by revenue ruling or revenue procedure.

(e) *Cross reference.* See § 1.6001–1(a) regarding the duty of taxpayers to keep such records as are sufficient to establish the amount of gross income, deductions, etc.

§ 1.263A–4 Rules for property produced in a farming trade or business. [Reserved]

§ 1.263A–5 Exception for qualified creative expenses incurred by certain free-lance authors, photographers, and artists. [Reserved]

§ 1.263A–6 Rules for foreign persons. [Reserved]

Par. 8. Section 1.446–1 is amended by revising the last sentence of paragraph (c)(1)(ii)(A) to read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) * * * As a further example, under section 263 or 263A, a liability that relates to the creation of an asset having a useful life extending substantially beyond the close of the taxable year is taken into account in the taxable year incurred through capitalization (within the meaning of § 1.263A–1(c)(3)) and may later affect the computation of taxable income through depreciation or otherwise over a period including subsequent taxable years, in accordance with applicable Internal Revenue Code sections and related guidance.

* * * * *

Par. 9. Section 1.461–1 is amended by revising the fifth sentence of (a)(2)(i) to read as follows:

§ 1.461–1 General rule for taxable year of deduction.

(a) * * *

(2) * * * (i) * * * As a further example, under section 263 or 263A, a liability that relates to the creation of an asset having a useful life extending substantially beyond the close of the taxable year is taken into account in the taxable year incurred through capitalization (within the meaning of § 1.263A–1(c)(3)), and may later affect the computation of taxable income through depreciation or otherwise over a period including subsequent taxable years, in accordance with applicable Internal Revenue Code sections and guidance published by the Secretary.

* * *

* * * * *

Par. 10. Section 1.471–3 is amended by adding a sentence to the end of paragraph (b), and by revising the last sentence of paragraph (c) to read as follows:

§ 1.471–3 Inventories at cost.

* * * * *

(b) * * * For taxpayers acquiring merchandise for resale that are subject to the provisions of section 263A, see §§ 1.263A–1 and 1.263A–3 for additional amounts that must be included in inventory costs.

(c) * * * See §§ 1.263A–1 and 1.263A–2 for more specific rules regarding the treatment of production costs.

* * * * *

Par. 11. Section 1.471–4 is amended by revising paragraph (a); by adding headings for paragraphs (b) and (c), and by adding paragraph (d) to read as follows:

§ 1.471–4 Inventories at cost or market, whichever is lower.

(a) *In general*—(1) *Market definition.* Under ordinary circumstances and for normal goods in an inventory, *market* means the aggregate of the current bid prices prevailing at the date of the inventory of the basic elements of cost reflected in inventories of goods purchased and on hand, goods in process of manufacture, and finished manufactured goods on hand. The basic elements of cost include direct materials, direct labor, and indirect costs required to be included in inventories by the taxpayer (e.g., under section 263A and its underlying regulations for taxpayers subject to that section). For taxpayers to which section 263A applies, for example, the basic elements of cost must reflect all direct costs and all indirect costs properly allocable to goods on hand at the inventory date at the current bid price of those costs, including but not limited to the cost of purchasing, handling, and storage activities conducted by the taxpayer, both prior to and subsequent to acquisition or production of the goods. The determination of the current bid price of the basic elements of costs reflected in goods on hand at the inventory date must be based on the usual volume of particular cost elements purchased (or incurred) by the taxpayer.

(2) *Fixed price contracts.* Paragraph (a)(1) of this section does not apply to any goods on hand or in process of manufacture for delivery upon firm sales contracts (i.e., those not legally subject to cancellation by either party) at fixed prices entered into before the date of the inventory, under which the taxpayer is protected against actual loss. Any such goods must be inventoried at cost.

(3) *Examples.* The valuation principles in paragraph (a)(1) of this section are illustrated by the following examples:

Example 1. (i) Taxpayer A manufactures tractors. A values its inventory using cost or market, whichever is lower, under paragraph (a)(1) of this section. At the end of 1994, the cost of one of A's tractors on hand is determined as follows:

Direct materials	$3,000
Direct labor	4,000
Indirect costs under section 263A	3,000
Total section 263A costs (cost)	10,000

(ii) A determines that the aggregate of the current bid prices of the materials, labor, and overhead required to reproduce the tractor at the end of 1994 are as follows:

Direct materials	$3,100
Direct labor	4,100
Indirect costs under section 263A	3,100
Total section 263A costs (market)	10,300

(iii) In determining the lower of cost or market value of the tractor, A compares the cost of the tractor, $10,000, with the market value of the tractor, $10,300, in accordance with paragraph (c) of this section. Thus, under this section, A values the tractor at $10,000.

Example 2. (i) Taxpayer B purchases and resells several lines of shoes and is subject to section 263A. B values its inventory using cost or market, whichever is lower, under paragraph (a)(1) of this section. At the end of 1994, the cost of one pair of shoes on hand is determined as follows:

Acquisition cost	$200
Indirect costs under section 263A	10
Total section 263A costs (cost)	210

(ii) B determines the aggregate current bid prices prevailing at the end of 1994 for the elements of cost (both direct costs and indirect costs incurred prior and subsequent to acquisition of the shoes) based on the volume of the elements usually purchased (or incurred) by B as follows:

Acquisition cost	$178
Indirect costs under section 263A	12
Total § 263A costs (market)	190

(iii) In determining the lower of cost or market value of the shoes, B compares the cost of the pair of shoes, $210, with the market value of the shoes, $190, in accordance with paragraph (c) of this section. Thus, under this section, B values the shoes at $190.

(b) *Inactive markets.* * * *

(c) *Comparison of cost and market.* * * *

(d) *Effective date.* This section applies to inventory valuations for taxable years beginning after December 31, 1993. For taxable years beginning before January 1, 1994, taxpayers must take reasonable positions on their federal income tax returns with respect to the application of section 263A, and must have otherwise complied with § 1.471–4 (as contained in the 26 CFR part 1 edition revised April 1, 1993). For purposes of this paragraph (d), a reasonable position as to the application of section 263A is a position consistent with the temporary regulations, revenue rulings, revenue procedures, notices, and announcements concerning section 263A applicable in taxable years beginning before January 1, 1994. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

Par. 12. Section 1.471–5 is amended by revising the last sentence of that section in the concluding text to read as follows:

§ 1.471–5 Inventories by dealers in securities.

* * * See §§ 1.263A–1 and 1.263A–3 for rules regarding the treatment of costs with respect to property acquired for resale.

Par. 13. Section 1.471–8 is amended by revising the last sentence of the concluding text of paragraph (a) to read as follows:

§ 1.471–8 Inventories of retail merchants.

(a) * * *

* * * See §§ 1.263A–1 and 1.263A–3 for rules regarding the computation of costs with respect to property acquired for resale.

* * * * *

Par. 14. Section 1.471–11 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 1.471–11 Inventories of manufacturers.

(a) * * * See also § 1.263A–1T with respect to the treatment of production costs incurred in taxable years beginning after December 31, 1986, and before January 1, 1994. See also §§ 1.263A–1 and 1.263A–2 with respect to the treatment of production costs incurred in taxable years beginning after December 31, 1993.

* * * * *

Par. 15. Section 1.1502–13 is amended by revising the last sentence of paragraph (c)(2) to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(c) * * *

(2) * * * See the regulations under section 263A for costs properly includible in cost of goods sold.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 16. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 17. Section 602.101(c) is amended by adding entries in numerical order to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.263A–1	1545–1233
1.263A–2	1545–1233
1.263A–3	1545–1233
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–18130 Filed 8–6–93; 8:45 am]

BILLING CODE 4830–01–U

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Records and Information; Exemption of Records System Under the Privacy Act

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board ("NLRB") is exempting a Privacy Act system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a. This system of records is entitled "NLRB–18, Office of Inspector General Investigative Files."

Section (j)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt a system of records from the Act, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (10) and (11), and (i) if the system of records is compiled for a criminal law enforcement purpose and maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws.

Section (k)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt a system of records from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), if the system of records is investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) of the Act.

The Office of the Inspector General Investigative Files contain information of the type described in sections (j)(2) and (k)(2) of the Privacy Act. The Inspector General Act Amendments of 1988, Pub. L. No. 100–504, amending Pub. L. No. 95–452, 5 U.S.C. app. at 1184 (1988), authorize the Office of Inspector General to conduct investigations to detect fraud and abuse

in the programs and operations of the NLRB and to assist in the prosecution of participants in such fraud or abuse. The Office of the Inspector General (OIG) investigative files are maintained pursuant to its law enforcement and criminal investigation functions. Exemptions under sections 552a(j)(2) and (k)(2) of the Privacy Act are necessary to maintain the confidentiality of the investigative files and the effectiveness of the Inspector General's investigations.

The disclosure of information contained in this system of records, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable suspects to take action to prevent detection of unlawful activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified or retained would significantly impede the effectiveness of OIG investigative activities and in addition, could preclude the apprehension and successful prosecution or discipline of persons engaged in fraud or other illegal activity.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT:

John C. Truesdale, Executive Secretary, National Labor Relations Board, room 11602, 1099 14th Street, NW., Washington, DC 20570–0001.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the **Federal Register** on April 3, 1992. No comments were received regarding the NLRB's application of the exemptions pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Accordingly, this final rule reflects no changes.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NLRB certifies that this final rule will not have a significant impact on a substantial number of small businesses. The NLRB further finds that this rule does not qualify as a "major rule" under Executive Order No. 12291 since it will not have an annual effect on the economy of $100 million or more.

List of Subjects in 29 CFR Part 102:

Privacy, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 102 of title 29, chapter I of the Code of Federal Regulations, is amended by adding paragraphs (m), (n), and (o) as follows:

PART 102—[AMENDED]

Subpart K—Records and Information

1. The authority citation for part 102 is revised as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 552a (j) and (k) of the Privacy Act (5 U.S.C. 552a (j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

§ 102.117 [Amended]

2. Section 102.117 of subpart K, is amended by adding paragraphs (m), (n), and (o) as follows:

* * * * *

(m) Pursuant to 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General of the National Labor Relations Board that contains Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and 29 CFR 102.117(c), (d), (f), (g), (h), (i), (j) and (k), insofar as the system contains investigatory material compiled for criminal law enforcement purposes.

(n) Pursuant to 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General of the National Labor Relations Board that contains the Investigative Files shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 29 CFR 102.117 (c), (d), (f), (g), (h), (i), (j), and (k), insofar as the system contains investigatory material compiled for law enforcement purposes not within the scope of the exemption at 29 CFR 102.117(m).

(o) Privacy Act exemptions contained in paragraphs (m) and (n) of this section are justified for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since this system of records is being exempted from subsection (d) of the Act, concerning access to records, this section is inapplicable to the extent that this system of records will be exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him/her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in this system of records could inform the subject of an investigation of an actual or potential criminal violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his/her activities, or of the identity of confidential sources, witnesses, and law enforcement personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish

a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective law enforcement, OIG investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation, thereby enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual, at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record and how to contest its content. Since this system of records is being exempted from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that this system of records will be exempt from subsections (f) and (d) of the Act. Although the system would be exempt from these requirements, OIG has published information concerning its notification, access, and contest procedures because, under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a **Federal Register** notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although the system will be exempt from this requirement, OIG has published such a notice in broad generic terms.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines "maintain" to include the collection of information, complying with this provision could prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which seems unrelated, irrelevant, or incomplete when collected can take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(10) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his/her request if any system of records named by the individual contains a record pertaining to him/her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation were able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since this system would be exempt from subsection (d) of the Act, concerning access to records, the requirements of subsection (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable to the extent that this system of records will be exempted from subsection (d) of the Act. Although this system would be exempt from the requirements of subsection (f) of the Act, OIG has promulgated rules which establish agency procedures because, under certain circumstances, it could be appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(12) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections

(d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since this system of records would be exempt from subsections (c)(3) and (4), (d), (e)(1), (2), and (3) and (4)(G) through (I), (e)(5), and (8), and (f) of the Act, the provisions of subsection (g) of the Act would be inapplicable to the extent that this system of records will be exempted from those subsections of the Act.

Dated, Washington, DC, July 30, 1993.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 93–18900 Filed 8–6–93; 8:45 am]

BILLING CODE 7545–01

DEPARTMENT OF DEFENSE

Corps of Engineers

Department of the Army

33 CFR Part 334

Restricted Area, Federal Correctional Institution, Terminal Island, Reservation Point, California; Correction

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correction to interim final rule.

SUMMARY: This document contains a correction to interim final regulations which were published in the **Federal Register** on December 8, 1992 (57 FR 58098) with the comment period expiring on January 7, 1993. We received no comments in response to the interim final rule and it remains in effect. However, an error was made in the description of the area, both in the preamble and in the text of the regulation. On the *west* side of Reservation Point should have read "on the *east* side of Reservation Point". No other changes are being made to the regulations.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Tiffany Welch at (213) 894–5606 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Warden, Federal Prison System, Federal Correctional Institution, Los Angeles, requested the Army Corps of Engineers to establish a restricted area in the waters adjacent to the Federal Correctional Institution. The restricted area extends approximately 150 feet (50 yards), out from and parallel to the prison perimeter fence on the *east* side of Reservation Point in San Pedro Bay (underscoring added). As published the interim final regulations in 33 CFR 334.938 paragraph (a), contains an error in the first sentence.

Correction of Publication

Accordingly, the publication of December 8, 1992, of the interim final regulations which were the subject of 57 FR 58098 is corrected as follows:

§ 334.938 [Corrected]

In the third column, paragraph (a), second line, the word "west" is corrected to read "east".

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 93–18903 Filed 8–6–93; 8:45 am]

BILLING CODE 3710–92–M

---

33 CFR Part 334

Restricted Area in the Kuluk Bay Near Adak, Alaska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: On April 29, 1993, the Army Corps of Engineers published interim final rules amending the regulations in 33 CFR 334.1320 to correct errors in the coordinates which establish a restricted area in the waters of Kuluk Bay, Adak, Alaska. The area encompassed by the coordinates in 33 CFR 334.1320 does not exactly agree with the location of submarine cables the area was designed to protect. The regulations presently prohibit anchoring and the dragging of anchors within the restricted area, except in great emergency. Due to the possibility of damage to the existing submarine cables, fishing and trawling are also prohibited within the restricted area. This amendment was published as an interim final rule with the opportunity for comment to coincide with the publication of a public notice published by the Alaska District Engineer. No comments were received in response to the interim final rule and the regulations are adopted without change.

DATES: Effective on April 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Weger at (907) 753–2716 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: On April 29, 1993, the Corps of Engineers published an interim final rule in the **Federal Register** (58 FR 26046), effective on that date. Written comments were invited with the closing period on June 1, 1993. The Commander, U.S. Navy Undersea Surveillance, U.S. Pacific Fleet, Pearl Harbor, Hawaii, requested that the Corps amend the regulations in 33 CFR 334.1320, which establish a naval restricted area in Kuluk Bay, near Adak, Alaska, (NOAA Nautical Chart No. 16475). The purpose of the amendment is to correct the coordinates which define the restricted area boundaries. The corrections expand the area approximately 1.3 nautical miles east, and the northern boundary approximately ½ nautical mile north. These amendments also include placing a restriction on fishing and trawling activities, in addition to anchoring and dragging of anchors, as currently stated in the regulations.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply. These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small government jurisdictions.) It has been determined that this rule will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

Accordingly, the interim final rule amending 33 CFR part 334 which was published at 58 FR 26046 on April 29, 1993, is adopted as a final rule without change.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–18902 Filed 8–6–93; 8:45 am]

BILLING CODE 3710–92–M

---

33 CFR Part 334

Restricted Area, San Nicholas Island, Ventura County, California

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: On April 19, 1993, the Corps of Engineers published interim final rules amending the regulations which establish a naval restricted area in the waters of the Pacific Ocean surrounding San Nicholas Island, Ventura County,

California. The existing restricted area regulations prohibit dredging, dragging, seining and other fishing operations. These regulations were amended to also prohibit anchoring within the section designated as ALPHA. This is essential to protect undersea cables in that area. The interim final rules were effective on April 19, 1993, with public comments invited until May 19, 1993. No comments were received and the final rules are adopted without change.

DATES: Effective on April 19, 1993.

ADDRESSES: HQUSACE, Attn: CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Ms. Tiffany Welch at (805) 641-1127 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: On April 19, 1993, the Corps of Engineers published an interim final rule in the **Federal Register** (58 FR 21226), effective on that date. Written comments were invited with the comment closing period on May 19, 1993. The Commander Undersea Surveillance, Pacific Fleet, U.S. Navy, requested that the Corps amend 33 CFR 334.980(d)(3) to prohibit anchorage indefinitely within ALPHA section surrounding San Nicholas Island. The current regulations governing the area forbid dredging, dragging, seining, and other fishing operations.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply. These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small Government jurisdictions). It has been determined that this rule will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Restricted areas, Transportation.

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

Accordingly, the interim final rule amending 33 CFR part 334 which was published at 58 FR 21226 on April 19, 1993, is adopted as a final rule without change.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-18904 Filed 8-6-93; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-4688-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in EPA regulations for certain solid wastes generated at Ampex Recording Media Corporation (Ampex), Opelika, Alabama. This action responds to a delisting petition submitted under those regulations that allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 9, 1993.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (room M2427) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is "F-93-AMEF-FFFFF." The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For technical information concerning this notice, contact Narendra K. Chaudhari, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-4787.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the wastes at levels of regulatory concern.

B. History of This Rulemaking

Ampex Recording Media Corporation, located in Opelika, Alabama, petitioned the Agency to exclude from hazardous waste control its F003/F005 solvent recovery residue (powder and pellet form) resulting from the manufacture of magnetic recording tapes. After evaluating the petition, EPA proposed, on August 21, 1992, to exclude Ampex's wastes from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 57 FR 37927). On September 30, 1992 (see 57 FR 45112), the Agency published a list of editorial corrections to the August 21, 1992 proposed rule. This list of corrections included clarification that Ampex's petitioned wastes are listed as EPA Hazardous Waste Nos. F003 and F005. (The proposed language amending part 261 incorrectly stated that Ampex's wastes were EPA Hazardous Waste Nos. F003 and F004.)

This notice responds to comments received on the proposed rule and finalizes the proposed decision to grant Ampex's petition.

II. Disposition of Petition

Ampex Recording Media Corporation, Opelika, Alabama

A. Proposed Exclusion

Ampex Recording Media Corporation, located in Opelika, Alabama, petitioned the Agency to exclude from hazardous waste control its solvent recovery residue resulting from the manufacture of magnetic recording tape, presently listed as EPA Hazardous Waste No. F003—"The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing,

before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures," and EPA Hazardous Waste No. F005—"The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures". Wastes classified as EPA Hazardous Waste No. F003 are listed as hazardous wastes solely because of the characteristic of ignitability (see 40 CFR 261.31). The listed constituents of concern for EPA Hazardous Waste No. F005 are toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxy-ethanol, benzene, and 2-nitropropane (see 40 CFR part 261, appendix VII).

In support of its petition, Ampex submitted:

(1) Detailed descriptions and schematics of its manufacturing and waste treatment processes; [1]

(2) A list of raw materials and Material Safety Data Sheets (MSDS) for all trade name products used in the manufacturing and waste treatment processes;

(3) Results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in 40 CFR 261.24,[2] and for nickel, antimony, cyanide, and sulfide;

(4) Results from total constituent analyses for 32 volatile organic and semi-volatile organic constituents;

(5) Results from the Toxicity Characteristic Leaching Procedure (TCLP; as described in 40 CFR part 261, appendix II) analysis for the TC constituents (except for the herbicides, 2,4-D, and 2,4,5-TP), antimony, and nickel;

(6) Results from total oil and grease analyses; and

(7) Results from characteristics testing for ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Ampex in support of its petition and determined that the hazardous constituents found in the petitioned wastes would not pose a threat to human health and the environment. Specifically, the Agency used the modified EPA Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned wastes. In addition, the Agency used its Organic Leachate Model (OLM) to estimate the leachable portion of the organic constituents in the petitioned wastes. Based on this evaluation, the Agency determined that the constituents in Ampex's wastes would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 57 FR 37927, August 21, 1992, for a detailed explanation of why EPA proposed to grant Ampex's petition for its solvent recovery residue.

B. Response to Public Comments

The Agency received two sets of comments on the proposed rule. The first commenter supported the Agency's proposed decision to exclude the petitioned wastes, and submitted information to clarify descriptions of Ampex's waste treatment process and sample collection procedures presented in the proposed rule. This commenter specifically noted that the transport of Ampex's powdered residue from the thin film evaporator to the pelletizer does not involve a conveyor. The commenter stated that the powdered material drops through a star valve into a chute which drops the material onto the pelletizer rotating plate. This commenter also noted that grab samples of the powdered material were collected using a 40-inch grain sampler only during the 1987–1988 sampling round; quart mason jars were used during all other sampling rounds. The Agency notes that these comments are editorial in nature and do not alter the Agency's evaluation of the potential hazard of Ampex's petitioned wastes.

The second set of comments (submitted jointly by two commenters) opposed the Agency's proposed exclusion of Ampex's wastes for a number of reasons. The comments submitted related to the following main subject areas: (1) Inadequacy of the models (i.e., TCLP, OLM, EPACML) used in evaluating non-aqueous phase liquid contaminants; (2) presence of high leachable levels of lead in Ampex's waste; and (3) the Agency's failure to adequately evaluate non-ground water pathways of exposure, especially air and surface water. The technical comments made by these commenters regarding the Agency's proposed decision to grant the petition, coupled with the Agency's responses to them, are discussed in the following sections.

a. Inadequacy of the Models Used in Evaluating Non-aqueous Phase Liquid Contaminants

Comment: The commenters' primary concern related to EPA's choice of models in evaluating Ampex's petitioned wastes. The commenters noted that some of the organic contaminants detected in Ampex's wastes are compounds that form non-aqueous phases in ground water, and that the presence of non-aqueous phase liquids (NAPLs) or oily materials in the subsurface make complete ground water clean-up via conventional technologies difficult. The commenters believed that, because Ampex's wastes contained non-aqueous phase liquid contaminants, the TCLP, OLM, and EPACML were inappropriate to use in evaluating the leaching potential of contaminants from these wastes.

The commenters were concerned specifically that the methods and models used by the delisting program are based largely on water solubility principles. With regard to evaluating the potential hazards of NAPL wastes, the commenters specifically noted that the use of the OLM is flawed because the model assumes that water solubility of organic constituents predicts mobility. The commenters further stated that the use of the TCLP is flawed because the method relies on organic constituents partitioning into the aqueous phase during the extraction step of the method. The commenters also indicated, by reference to other comments, that the EPACML is similarly flawed as it was developed to mimic the fate and transport of materials dissolved in an aqueous phase.

Response: The Agency believes that the commenters are attempting to characterize Ampex's petitioned wastes as NAPL wastes simply because the wastes contain constituents typically found in NAPL wastes. The Agency disagrees with this conclusion and does not believe that the presence of organic constituents known to be NAPL-related is a reason by itself to conclude that a petitioned waste could cause the formation of a non-aqueous phase liquid, that a petitioned waste is an oily material, or that the organic constituents

[1] Ampex has claimed portions of its manufacturing and treatment process descriptions and MSDSs as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.

[2] EPA has adopted the Toxicity Characteristic Leaching Procedure (TCLP) in the Toxicity Characteristic (TC) rulemaking (55 FR 11798, March 29, 1990) as a replacement to the EP for the establishment of the TC regulatory levels and these eight metals are now referred to as the TC metals.

present in the waste will only minimally dissolve in water.

First, Ampex's petitioned wastes contain relatively low concentrations of constituents that the commenters identify as NAPL-related. As discussed further in the response to the next comment, the Agency believes that total phenol and o-cresol concentrations in the petitioned wastes are not present at significant levels and do not pose a potential hazard to human health and the environment. Specifically, even if 100 percent of the phenol and o-cresol from Ampex's waste leached out into the extract medium, the maximum leachate concentrations of phenol and o-cresol would be far below the health-based levels of phenol (20 ppm) and o-cresol (2 ppm).

Second, it is extremely unlikely that Ampex's petitioned wastes would be the source of a non-aqueous phase liquid. The waste is originally generated as a powder, and not the oily type of waste that could lead to NAPL. As noted in the proposal, Ampex analyzed 12 composite samples of solvent recovery residue (SRR) powder and 12 composite samples of SRR pellets for total oil and grease content. These analyses indicated that the maximum total oil and grease content of the SRR powder ranged between 0.267 and 0.832 percent; and that the maximum oil and grease content of the SRR pellet samples ranged between 0.203 and 0.552 percent. Thus, the oil and grease content of Ampex's petitioned wastes are less than one percent, clearly indicating that the petitioned wastes are not oily wastes.

Finally, the constituents of particular concern to the commenters, phenol and o-cresol, are very soluble in water based on six categories of solubility described in an existing EPA document (See Hazardous Waste TSDF—Background Information for Proposed RCRA Air Emission Standards, Draft Report. Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA–450/3–89–023.) Specifically, the solubility of phenol is 8×10^4 mg/l, and the solubility of o-cresol is 3.1×10^4 mg/l. The major organic constituent of possible concern in Ampex's waste, cyclohexanone, is also quite soluble in water (2.3×10^4 mg/l). The Agency believes that these compounds, at the concentrations exhibited in Ampex's petitioned waste, would dissolve into the aqueous phase of the TCLP extract, or the leachate modeled by the OLM, or subsurface ground water.

For these reasons, the Agency does not believe that Ampex's petitioned wastes are NAPL wastes. Therefore, the Agency believes that the TCLP, OLM, and EPACML are appropriate models to use in the assessment of the potential hazard of Ampex's petitioned wastes.

Comment: The commenters also believed that total phenol levels were of particular concern. The commenters noted that data in the proposed rule reported maximum phenol concentrations of 31 ppm in the SRR pellets and 29 ppm in the SRR powder. The commenters believed that the analytical data for phenol in Ampex's wastes indicated that the wastes contained high enough levels of phenol to contaminate ground water above health-based levels. The commenters also stated that total o-cresol concentrations could be of concern, but that the proposed rule failed to present total constituent data for o-cresol.

Response: The Agency disagrees with the commenters that total phenol concentrations in Ampex's wastes are of concern. The commenters compared the maximum total levels of phenol in the waste directly with the health-based level for phenol. However, the health-based level is for phenol dissolved in water and ingested via drinking water. Therefore, any comparison of the total level of phenol in the waste (which is a solid), to this health-based level is meaningless. In the proposed rule, the Agency used the OLM and EPACML models to calculate the level of phenol that would result from phenol that leaches out of the waste, and migrates to a downgradient drinking water well. The maximum concentration of phenol calculated at the exposure point was 0.015 ppm, which is far below the health-based level of 20 ppm. The Agency continues to believe that this is the appropriate approach in evaluating the level of phenol in the waste.

Furthermore, even if the Agency assumed that 100 percent of the phenol leached out of Ampex's waste in the TCLP, the maximum concentration in the leachate would be 1.5 ppm. (The leaching solution used in the TCLP method is 20-times the amount of the waste sample, thus, the maximum phenol concentration in the waste of 31 ppm would result in no more than 1.5 ppm in the leachate.) Therefore, even without assuming any dilution or attenuation during migration, the leachable level itself would be below the health-based level.

With regard to o-cresol, the Agency notes that data for total o-cresol concentrations in the petitioned wastes were available in the RCRA public docket supporting the proposed rule. Specifically, the four samples collected during the Agency's May 8, 1990 spot-check visit were analyzed for total o-cresol. Analysis results for these samples showed that total o-cresol was not detected at the detection limit of 980 ug/kg (0.98 ppm). As presented in the proposed rule, the maximum concentration of o-cresol in the TCLP leachate was reported to be 0.066 ppm by Ampex. Based on the above discussion for phenol, migration and transport would lead to drinking water levels of o-cresol that are far below the total and leachable levels in the waste. Thus, under any set of assumptions, the level of o-cresol calculated for a downgradient exposure point would be below the delisting health-based level of 2 ppm. For these reasons, the Agency maintains its belief that phenol and o-cresol concentrations in Ampex's petitioned wastes are not of concern.

b. Presence of High Leachable Levels of Lead in Ampex's Waste

Comment: The commenters were concerned with leachable levels of lead in Ampex's waste, particularly leachable levels of lead in the two samples collected by EPA during a site visit. The commenters questioned EPA's preference for leachable lead data supplied by Ampex, rather than leachable lead data from analyses of its own two samples. The commenters noted that the compliance-point concentrations for lead based on Ampex's data, calculated using the EPA Composite Model for Landfills (EPACML), were near the level of regulatory concern, while EPACML results based on EPA's data actually exceeded the level of regulatory concern.

The commenters also noted that EPA apparently deferred to Ampex's data because it believed that the analytical technique used by Ampex (flame atomic absorption (AA) method) was more appropriate than the ICP method used by EPA to determine lead in the waste matrix. The commenters claimed that they were unable to fully evaluate EPA's rationale for this decision because EPA failed to identify if its ICP method was ICP atomic emission spectroscopy or ICP mass spectrometry (ICP/MS). The commenters believed that, if EPA used ICP/MS, then the rationale to use the Flame AA method data was inappropriate, because ICP/MS is less subject to matrix interference than AA for analyzing lead.

The commenters also had two other concerns related to the choice of analytical technique. In the first, the commenters noted that the analysis of lead using AA must be made by the method of standard additions because of recognized problems of matrix suppression. Second, the commenters noted that if EPA's analytical result

from the ICP analysis (2.7 ppm) was correct, then the sample could have "swamped" the Furnace AA detector and yielded an erroneously low result.

Response: In response to the commenters' concerns, EPA re-evaluated the leachable lead data submitted in support of Ampex's petition and collected during EPA's May 8, 1990 spot-check visit. As presented in Table 10 of the proposed rule, the spot-check samples were analyzed using ICP and the Ampex samples were analyzed using Flame or Furnace AA. The Agency notes, in fact, that the EPA's contract lab followed SW–846 Method 6010, ICP atomic emissions spectroscopy (ICPAES), and not the ICP/MS method in analyzing the spot-check samples. The Agency selected ICPAES because it is, in general, quicker and cheaper than Furnace AA when multi-component analyses are being performed. Both ICPAES and Furnace AA are equally valid methods for lead analysis. As noted in the proposed notice, however, the spot-check analyses using ICPAES had some unexplained matrix interferences. As a result, the Agency requested that Ampex submit eight additional powder and pellet samples analyzed for leachable lead to verify that lead was not present at levels of concern. Ampex's results for the additional samples showed no detectable levels of leachable lead in these samples. These results confirmed that the Agency's detected level was likely an anomaly for Ampex's waste. The Agency considers the larger database of leachable lead information (e.g., 16 samples) to be a better indicator of the lead levels in Ampex's waste than a single value.

The Agency disagrees with the commenters that method of standard additions (MSA) analyses must be used when Furnace AA analyses are performed. SW–846 requires that matrix spike and matrix spike duplicate analyses (MS/MSD) be performed during the analyses and not MSA. If significant matrix interferences are discovered during the MS/MSD then MSA can be used to resolve matrix interferences. The Agency notes that Ampex performed matrix spike and matrix spike duplicate analyses during each of its analytical events and reported satisfactory QC results for lead. Thus, performing MSA was not necessary or required. The Agency also disagrees with the commenters' assertion that a 2.7 ppm level of lead may have "swamped" the furnace detector during Ampex's reanalysis of the spot-check sample. Ampex has documented that during its reanalysis of the spot-check sample, the instrument was correctly calibrated so that this level would be in the linear range of the instrument. Thus, it is unlikely that this level swamped the detector and provided an erroneously low result. Thus, the Agency maintains its belief that leachable lead levels in Ampex's waste are not of concern.

Comment: The commenters believed that the discrepancies between EPA's leachable levels for lead and Ampex's should have raised a cautionary flag for EPA, and that EPA should have re-sampled and reanalyzed the waste before proposing to exclude Ampex's waste.

Response: The Agency maintains its belief that leachable lead levels are not of concern. Nonetheless, to fully address this issue, the Agency has collected additional samples of Ampex's waste. The Agency conducted a second spot-check visit to Ampex on November 9, 1992 and collected two samples of Ampex's powdered material. These samples were analyzed for lead using Furnace AA to allow for a more direct comparison with the analytical results provided by Ampex. In addition, the laboratory was requested to analyze the samples using the method of standard additions as specified in SW–846 Method 7000 to eliminate uncertainties regarding matrix effects. Table 2 presents a summary of all the leachable lead data for Ampex's SRR powder, including EPA's most recent spot-check visit (i.e., samples EPA–03 and EPA–04). (The laboratory reports themselves are available for review in the RCRA public docket for today's rule.)

TABLE 2.—SUMMARY OF LEACHABLE LEAD CONCENTRATIONS (PPM) (SOLVENT RECOVERY RESIDUE POWDER)

Sample No.	Leachable lead concentration	Extraction method	Analytical method
AMP–01	<0.05	EP	Furnace AA.
AMP–02	<0.05	EP	Furnace AA.
AMP–03	<0.05	EP	Furnace AA.
AMP–04	<0.05	EP	Furnace AA.
AMP–05	<0.2	TCLP	Flame AA.
AMP–06	<0.2	TCLP	Flame AA.
AMP–07	<0.2	TCLP	Flame AA.
AMP–08	<0.2	TCLP	Flame AA.
EPA–01	0.943	TCLP	ICP.
EPA–02	2.750	TCLP	ICP.
EPA–02a	0.13	TCLP	Furnace AA.
AMP–09	<0.008	TCLP	Furnace AA.
AMP–10	<0.008	TCLP	Furnace AA.
AMP–11	<0.008	TCLP	Furnace AA.
AMP–12	<0.008	TCLP	Furnace AA.
AMP–13	<0.008	TCLP	Furnace AA.
AMP–14	<0.007	TCLP	Furnace AA.
AMP–15	<0.007	TCLP	Furnace AA.
AMP–16	<0.007	TCLP	Furnace AA.
EPA–03	0.015	TCLP	Furnace AA.
EPA–04	0.010	TCLP	Furnace AA.

<: Denotes that the constituent was not detected at the detection limit specified in the table.
a: Ampex reanalysis of EPA–02 sample.

The Agency believes that the analytical results from EPA's second spot-check visit support the conclusion that the data from EPA's initial site visit were not representative of the levels of leachable lead in Ampex's waste.

Therefore, the Agency continues to believe that leachable lead levels are not of concern in Ampex's powder solvent recovery residues.

Comment: The commenters also disagreed with EPA's decision to use the level 0.015 mg/l as the regulatory level of concern for leachable lead. The commenters contend that EPA stated the 0.015 mg/l action level corresponded to approximately 0.005 mg/l as an average (see 56 FR 26477). The commenters believed that it would be more appropriate to use the average lead level, or 0.005 mg/l, as the regulatory level of concern. The commenters also argued that the use of a Safe Drinking Water Act "action level" as a regulatory level of concern for delisting was inapplicable because the action level was keyed to a first-draw water from leaded pipes, which bears little resemblance to the types of conditions encountered by a delisted waste and is therefore not an appropriate measure for determining the allowable level of leachable lead for a delisting decision. The commenters believed that, if EPA was going to use this approach, it should at least consider using 0.005 mg/l as the regulatory level of concern, since the level corresponded to the average leach level.

Response: The Agency disagrees with the commenters' assertion that it should use the level of 0.005 mg/l as the regulatory level of concern for leachable lead. While the action level of 0.015 mg/l is not a formal MCL, EPA stated in the preamble to the lead rule that the level of 0.015 mg/l is "associated with substantial public health protection" (see 56 FR 26477, June 7, 1991). Furthermore, the Agency decided to adopt this value instead of an average or median value because this method does not require assumptions concerning values less than the lead practical quantitation level of 0.005 mg/l. Thus, the Agency believes that the 0.015 mg/l level is the appropriate level for use in delisting decision making.

To further address the commenters' concern, the Agency calculated a mean value for all of the leachable lead data in Table 2 (0.23 mg/l) to compare to the "average" level of concern suggested by the commenters. The value specified for the detection limit was used for samples with no detected lead levels. This is a worst case assumption, given that all but the two initial EPA samples (EPA–01 and EPA–02) appear to be far below the detection limits reported for some of Ampex's data (AMP–05 through AMP–08). In any case, the calculated mean for leachable lead of 0.23 mg/l, when input in the EPACML, would yield a compliance point concentration for lead (0.0023 mg/l) that is well below 0.005 mg/l. Furthermore, as noted earlier, the initial EPA samples (EPA–01 and EPA–02) appear to be anomalous. If these data points are not included, the mean lead level (0.064 mg/l) yields an even lower compliance point concentration (0.00064 mg/l). Therefore, even using the approach suggested by the commenters, the lead levels in Ampex's waste are not of concern.

c. Hazards From Non-Groundwater Pathways of Exposure: Air Emissions and Surface Water Contamination

Comment: The commenters disputed EPA's decision to evaluate only the hazard posed by particles of 10 um or less when considering the airborne dispersal of waste contaminants. (The comments refer to particles of "10 ug" or less; EPA believes this is a typographical error and assumed the commenter intended to write 10 um.) The commenters believed that using an upper limit size of 10 um ignored the principal pathway of concern for toxic constituents, such as lead, for which the principal pathway is ingestion.

Response: As noted in the proposed rule, the Agency chose to assess the potential hazards of Ampex's petitioned waste via an airborne pathway because of the possible nature of Ampex's solvent recovery residue (powder form). Specifically, the Agency evaluated the potential impact of inhaling particulate matter that is released and dispersed from the surface of a disposal site. The Agency believes that the commenters are concerned about human exposure to contaminants that potentially could be deposited on a surface downwind of the disposal site and available for ingestion through hand-to-mouth contact. While the Agency agrees that some particulate matter might be ingested following dispersion, EPA believes that this is not a principal pathway of concern in this case for several reasons.

First, the level of toxic constituents in Ampex's waste are relatively low, e.g., the maximum level of lead measured in the waste powder was 358 ppm (average = 227 ppm). This level is below acceptable soil levels for lead (500 to 1,000 ppm) as currently used by EPA in remediation of lead contaminated soil. (See Memorandum on "Interim Guidance on Establishing Soil Lead Cleanup Levels at Superfund Sites," which is in the docket for today's rule.) Furthermore, as the docket to the proposed rule noted, the area containing any of Ampex's waste that might be exposed (i.e., uncovered) at a landfill should be relatively small (1,126 square meters, or < 0.3 acres) due to the small volume of waste generated. Thus, in the unlikely event that Ampex's exposed waste (1,126 square meters), containing the maximum level of measured lead (358 ppm) is completely dispersed over an area enclosed by a circle with a radius of 1,000 feet or 305 meters (area = 2.92E+05 square meters), the soil lead level from Ampex's waste at a distance of 1,000 feet (the hypothetical exposure point for wind dispersal) would not exceed 1.3 ppm. This level, which can be calculated from the ratio of waste area to total area (0.0038) multiplied by the maximum level of measured lead (358 ppm), is far below any reasonable level of concern. For example, the mean lead level in uncontaminated soils throughout the United States was reported to be 19 ppm (See Shacklette, H.T. and J.G. Boerngen, 1984. Element Concentrations in Soils and Other Surficial Materials of the Coterminous United States. U.S. Geological Survey Professional Paper 1270.)

In order to fully respond to the commenters' concerns, the Agency also investigated the potential hazards associated with exposure to particles up to 30 um in size that are deposited on soil and subsequently ingested, using a methodology that relies on a modified version of EPA's Ambient Air Dispersion Model (AADM) to predict the downwind concentration of contaminants. (The AADM was originally described in 50 FR 48963, November 27, 1985, and was used by EPA to evaluate the potential hazards of inhaling particulate emissions, as presented in the RCRA public docket supporting the Agency's proposal to exclude Ampex's petitioned waste.)

Using the modified AADM, the concentrations of contaminants in soil from Ampex's waste were conservatively estimated based on atmospheric deposition of waste particles for one year (without loss at the site of deposition) at a downwind distance of 1,000 feet from the disposal site boundary. Modifying the analyses this way results in a negligible level of lead in the soil (<0.02 ppm). The results of this determination were compared to Agency's criteria for evaluating contaminant levels in soil (500 to 1000 ppm) and the background level (19 ppm) noted above. All of these evaluations clearly show that Ampex's waste does not pose a substantial present or potential hazard to human health through air dispersion and deposition. A complete description of the Agency's assessment of the potential impact of Ampex's waste, with regard to atmospheric deposition and ingestion of waste contaminants accumulated in soil using the modified AADM, is presented

in the RCRA public docket for today's rule.

Comment: The commenters believed that EPA must also evaluate the hazard posed by the volatilization of organic contaminants present in Ampex's waste. The commenters were particularly concerned about the presence of phenol, toluene, formaldehyde, methyl ethyl ketone, and cyclohexanone in the waste. The commenters believed that wastes containing volatile constituents cannot be evaluated for the hazards they pose to human health and the environment without a quantitative assessment of the volatilization pathway.

Response: The Agency agrees with the commenters that some volatilization may occur from Ampex's waste contained in a landfill. However, given its relatively small volume and data showing that it contains relatively low concentrations of volatile organics, EPA believes any volatile emissions from Ampex's waste would be insignificant. Furthermore, the Agency notes that the residuals generated by Ampex are in powder form, and result from recovery of spent solvents. Significant volatile releases seem unlikely for this waste. Therefore, the Agency believes a quantitative evaluation of volatile organic emissions is unnecessary.

In any case, to fully respond to the commenters' concerns, the Agency investigated whether the levels of volatile organic contaminants present in Ampex's waste could possibly pose a potential hazard to human health. As noted in the proposed rule, twelve organic constituents were detected in samples of Ampex's petitioned waste. Of these twelve constituents, the Agency determined that the following eight compounds have the potential to volatilize (based on information about constituent-specific boiling points): acetone, cyclohexanone, ethyl benzene, formaldehyde, methyl ethyl ketone, methylene chloride, toluene, and xylene. The Agency believes that the commenters' concern regarding the potential volatilization of phenol is unfounded, as the boiling point for phenol (i.e., 182 °C) is significantly greater than the boiling points of compounds typically classified as "volatile". For example, EPA did not classify phenol as volatile when evaluating it as a potential TC constituent (see 51 FR 21648, June 13, 1986). However, EPA included phenol in its evaluation in order to fully address the commenters' concern.

As a worst case, the Agency assumed that 100 percent of these constituents would be lost to the air. The Agency used the AADM model that was included in the docket to the proposed rule to predict the downwind concentrations of these constituents. The results of this conservative, worst-case evaluation indicated that there is no substantial present or potential hazard to human health from volatilization of organic contaminants present in Ampex's waste. All organic constituents were estimated to be well below levels of concern. A complete description of the Agency's modeling and analysis of volatile emissions from Ampex's petitioned waste is presented in the RCRA public docket for today's rule.

Comment: The commenters took exception to EPA's assertion that leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. The commenters noted that many industrial waste disposal sites are located close to surface water bodies and that wastes, such as Ampex's petitioned waste, have a high likelihood of running directly off of the land without first entering the subsurface. In a runoff scenario such as this, the commenters argued that total concentrations of toxic constituents, not leachable concentrations, would be of primary concern.

Response: The Agency maintains its belief that leachate derived from Ampex's petitioned waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. This is because delisted wastes are typically managed in regulated solid waste management units. Discharge of pollutants into surface waters are currently regulated under the Clean Water Act (CWA). The Agency has promulgated regulations for municipal solid waste landfills that will also require run-on and run-off controls, and explicitly prohibit discharges that violate the CWA (see 56 FR 50978, October 9, 1991).

Furthermore, EPA disagrees with the commenters' statement that leachable concentrations are not useful in assessing risks posed by surface water runoff. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituent that may be mobilized in surface water, as well as groundwater. For example, TCLP tests (which are performed with a more aggressive acidic extraction medium, not water) show that the fraction of lead in Ampex's waste that is mobile is only on the order of 1 percent. Similar results can be calculated for other metals. However, in response to the commenters' concerns, the Agency investigated the potential hazards that may result from exposure to contaminants in Ampex's petitioned waste through a surface water pathway. This evaluation involved a worst-case estimation of the annual soil/waste erosion from a landfill, the amount of waste delivered to the surface water body, and the volume of surface water into which runoff occurs. The Agency determined the dissolved concentration of contaminants from Ampex's waste by making the worst-case assumption that the contaminants in the eroded material completely dissolve in the surface water body. The results of this conservative evaluation indicated that there is no substantial present or potential hazard to human health from runoff of Ampex's waste to surface water. The minimum dilution factors calculated by this approach (>300,000) confirm the Agency's contention in the proposed rule that any contaminants in runoff would be further diluted by the water body. A complete description of the Agency's evaluation of contaminant releases from runoff of Ampex's waste to a surface water body is presented in the RCRA public docket for today's rule.

C. Final Agency Decision

For the reasons stated in the proposal and in this final rule, the Agency believes that Ampex's solvent recovery residue (powder and pellet form) should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Ampex Recording Media Corporation, located in Opelika, Alabama, for its solvent recovery residue, described in its petition as EPA Hazardous Waste Nos. F003/F005.

This exclusion only applies to the processes and waste volume (a maximum of 1,000 cubic yards generated annually in the powder or pellet form) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition occurred (e.g., if levels of hazardous constituents increased significantly) or if an increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 1,000 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would be relieved from the Subtitle C jurisdiction upon final promulgation of an

exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted wastes may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the wastes, or treats the wastes prior to such beneficial use, reuse, recycling, or reclamation (see 40 CFR part 260, appendix I).

III. Limited Effect of Federal Exclusion

The final exclusion for Ampex is being granted under the Federal (RCRA) delisting program; this exclusion is not effective in Alabama because on May 17, 1993, the State of Alabama became authorized to administer a number of RCRA programs, including delisting, in lieu of the Federal program. If Ampex wants to dispose of its waste in Alabama, it will need to have its delisting petition approved by Alabama. However, Ampex has indicated that it may transport its delisted waste for disposal to another State where the Federal delisting program remains in effect, and thus where today's delisting would be effective. In addition, even if Alabama eventually decides (as an authorized State) to delist the waste, that action would only have effect within Alabama, and a Federal delisting would generally still be needed for out of State transport as nonhazardous waste. Therefore, the Agency has decided to proceed with the final rulemaking and is granting a Federal delisting to Ampex.

IV. Effective Date

This rule is effective August 9, 1993. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date of six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon publication. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its wastes as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: July 27, 1993.

David Bussard,

Acting Deputy Director, Office of Solid Waste.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In Table 1 of appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * *
Ampex Recording Media Corporation	Opelika, Alabama	Solvent recovery residues in the powder or pellet form (EPA Hazardous Waste Nos. F003 and F005) generated from the recovery of spent solvents from the manufacture of tape recording media (generated at a maximum annual rate of 1,000 cubic yards in the powder or pellet form) after August 9, 1993. In order to confirm that the characteristics of the wastes do not change significantly, the facility must, on an annual basis, analyze a representative composite sample of the waste (in its final form) for the constituents listed in 40 CFR 261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to 40 CFR 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Alabama. Failure to maintain the required records on-site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.
* * *	* * *	* * *

[FR Doc. 93–18842 Filed 8–6–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6990

[OR–943–4210–06; GP3–230; OR–48136]

Withdrawal of National Forest System Lands To Protect the Rehabilitation Work on the White King and Lucky Lass Uranium Mines; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 200.59 acres of National Forest System lands in the Fremont National Forest from mining for a period of 20 years for the Department of Agriculture, Forest Service, to protect the rehabilitation work to be done on the White King and Lucky Lass uranium mines near Lakeview, Oregon. The lands have been and will remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to prevent damage to the proposed containment cell and the rehabilitation mine pits:

Willamette Meridian

Fremont National Forest

T. 37 S., R. 18 E.,
Sec. 25, NE¼NE¼.
T. 37 S., R. 19 E.,
Sec. 30, lot 1, E½NW¼, and NW¼SE¼.

The areas described aggregate 200.59 acres in Lake County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 28, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–19012 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–33–M

43 CFR Public Land Order 6991

[OR–943–4210–06; GP3–231; OR–47602]

Withdrawal of National Forest System Land To Protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 1,936 acres of National Forest System land in the Mt. Hood National Forest from mining for a period of 20 years for the Department of Agriculture, Forest Service, to protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area near Estacada, Oregon. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the

recreational, historical, educational, and geological values in the Bagby Hot Springs Area:

Willamette Meridian

Mt. Hood National Forest

T. 7 S., R. 5 E.,

Sec. 14, SE¼SW¼SW¼, E½SE¼SW¼, SW¼SE¼SW¼, NW¼SW¼SE¼, S½SW¼SE¼, and SW¼SE¼SE¼;

Sec. 22, SE¼SW¼, NE¼SE¼, S½NW¼SE¼, and S½SE¼;

Sec. 23, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, E½NW¼, E½NW¼NW¼, SW¼NW¼NW¼, SW¼NW¼, and S½;

Sec. 24, SW¼SW¼SW¼;

Sec. 25, W½W½NW¼, W½NW¼SW¼, and NW¼SW¼SW¼;

Sec. 26, N½, N½S½, and that portion of the S½S½ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;

Sec. 27, NE¼, E½NW¼, E½NE¼SW¼, NE¼SE¼SW¼, N½SE¼ and that portion of the S½SE¼ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;

Sec. 34, that portion of the N½NW¼NE¼ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;

Sec. 35, that portion of the N½NE¼NE¼ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

The area described contains approximately 1,936 acres in Clackamas County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 28, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–19013 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–33–M

43 CFR Public Land Order 6992

[AK–932–4210–06; AA–56314]

Partial Revocation of Executive Order No. 4257, Dated June 27, 1925; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects approximately 228 acres of National Forest System lands withdrawn for use by the Coast Guard, Department of Transportation, for the Sukoi Islets and the Turn Point Lighthouses. The lands are no longer needed for the purpose for which they were withdrawn. This action also opens the Sukoi Islets Lighthouse land for selection by the State of Alaska, if such land is otherwise available. Any of this land that is not selected by the State will be open to such forms of disposition as may by law be made of National Forest System lands. The Turn Point Lighthouse land is part of the Misty Fjords National Monument and Misty Fjords National Monument Wilderness, as established and designated by the Alaska National Interest Lands Conservation Act, and remains withdrawn from all forms of entry, appropriation, or disposal under the public land laws.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 4257, dated June 27, 1925, which withdrew National Forest System lands for lighthouse purposes, is hereby revoked insofar as it affects the following described lands:

Copper River Meridian

Tongass National Forest

(a) Sukoi Islets Lighthouse

The western island of the Sukoi Islets, Frederick Sound, located within protracted secs. 26, 27, and 35, of T. 57 S., R. 79 E., excluding a parcel of land more particularly described as:

Beginning at a point 100 feet due East of Sukoi Islets Light; Thence along due North, South line to mean high water, all land due West of this North, South line containing approximately 2.0 acres.

The area described contains approximately 118 acres.

(b) Turn Point Lighthouse

A parcel of land located within protracted secs. 15 and 22, of T. 74 S., R. 101 E., beginning at a point on low water line, west shore of Portland Canal, 3040 feet in a direct line, southerly from the center of Turn Point Beacon, a tripod anchored to concrete piers; Thence west true 1520 feet; Thence north true, 5050 feet, more or less, to an intersection with the low line; Thence southeasterly and southerly following the windings of low water line to point of beginning. The area described contains approximately 110 acres.

The areas described aggregate approximately 228 acres.

2. Subject to valid existing rights, the land described in paragraph 1(a) is hereby opened to selection by the State of Alaska under section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988).

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described in paragraph 1(a), for a period of ninety-one (91) days from the date of publication of this order, if such land is otherwise available. Any of the land described in paragraph 1(a) that is not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest reservation, and any other withdrawal of record.

4. At 10 a.m. on November 8, 1993, the land described in paragraph 1(a) will be opened to such forms of disposition as may by law be made of the National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

5. The land described in paragraph 1(b) is part of the Misty Fjords National Monument and Misty Fjords National Monument Wilderness pursuant to sections 503, 703, and 707 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2399, 2418, and 2421, and remains withdrawn from all forms of entry, appropriation, or disposal under the public land laws. Any land described in paragraph 1(b) that may be outside of the Misty Fjords National Monument and Misty Fjords National Monument Wilderness will remain withdrawn from all forms of entry, appropriation, or disposal under the public lands laws until a further opening order is published.

Dated: July 28, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–19011 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 25, 73, 74, 76 and 100

[MM Docket No. 92–261, FCC 93–334]

Revision of Broadcast and Cable Television EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order in MM Docket No. 92–261 adopts rules to implement Section 22 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). Specifically, in this Report and Order the Commission has amended its broadcast EEO Rule to require a mid-term review of broadcast television stations. In addition, the Commission amended its cable EEO regulations and reporting form to expand the number of job categories from nine to 15, require the collection of job title information, and to expand the scope of the cable EEO regulations to include any multichannel video programming distributor. This action is taken in order to comply with the EEO provisions set forth in Section 22 of the 1992 Cable Act.

EFFECTIVE DATES: Rules: September 8, 1993. Revised FCC Form 395–A: November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Lisa M. Higginbotham, Mass Media Bureau, Enforcement Division. (202) 632–7069.

SUPPLEMENTARY INFORMATION: Public reporting burden for the collection of information under FCC Form 395–A is estimated to be 1.95 hours per response. This reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, AMD–PIRS, Records Management Division, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

This is a synopsis of the Commission's Report and Order in MM Docket No. 92–261, adopted June 24, 1993, and released July 23, 1993. The complete text of this document which was adopted in MM Docket No. 92–261, is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. This Report and Order in MM Docket No. 92–261 adopts rules to implement Section 22 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). This Act adds a new Section 334 to the Communications Act of 1934 which codifies the Commission's broadcast EEO rule (47 CFR 73.2080) and its EEO reporting forms as they apply to broadcast television stations (FCC Form 396 and FCC Form 395–B) and requires a mid-term review of broadcast television stations' employment practices. The 1992 Cable Act also amends Section 634 of the Communications Act to require the collection of more specific employee data from cable operators, expand the number of job categories from nine to 15, raise the basic forfeiture for cable EEO violations from $200 to $500, and expand the scope of the EEO provisions to include multichannel video programming distributors. The Notice of Proposed Rule Making ("NPRM") in this rule making proceeding, 58 FR 3929 (January 12, 1993), sought comment on proposed rules to implement the EEO provisions of the 1992 Cable Act.

Mid-term Reviews for Broadcast Television Stations

2. In the Report & Order we amended our current broadcast EEO Rule (47 CFR 73.2080) to require an EEO mid-term review of broadcast television stations. This review will consist of an evaluation of a station's employment profile using our processing guidelines. To conduct this review, we will use the first two Forms 395–B filed after the station's group license expiration date as specified in 47 CFR 73.1020 of our rules. The mid-term review letters, which will be sent only to those licensees who fail the review, will contain sufficient information to provide licensees with specific guidance as to areas of possible EEO deficiency. The results of the mid-term review will not result in a sanction against the licensee but will constitute only an early warning that a licensee's EEO efforts may need improvement. Thus, the absence of a deficiency letter at mid-term will not be evidence of compliance at renewal time. Moreover, at renewal time, we will take cognizance of all pertinent EEO data, including data relied upon for the mid-term review. The first group of broadcast television stations that will be subject to the mid-term review, will be those stations whose licenses expired on October 1, 1991. This group includes those broadcast television stations located in the District of Columbia, Maryland, Virginia, and West Virginia.

Cable Equal Employment Opportunities

3. *Collection of Employee Data.* In the NPRM, the Commission proposed to amend the cable annual employment report (FCC Form 395–A) to collect employment data for full and part-time employees separately as well as by job title. In addition, the Commission proposed to collect recruitment, hiring, promotion and employment information for the additional six new upper-level job categories. Based upon the comments in this proceeding, we have revised the amount of information collected on the Form 395–A. Specifically, cable operators will continue to report employee data for full and part-time employees in the aggregate on one grid. To collect the job title information, we will allow cable operators to submit computer-generated employee lists as suggested by one commenter. Cable operators also will submit hiring and promotion data for the six new job categories. Although we will not collect specific recruitment information, on the Form 395–A, we remind cable operators that they are expected to maintain documentation of their recruitment efforts for all job categories, including the six new job categories, and to submit such documentation upon Commission request.

4. *Definitions for Job Categories.* The 15 job categories include: Corporate Officers, General Manager, Chief Technician, Comptroller, General Sales Manager, Production Manager, Managers, Professionals, Technicians, Sales, Office and Clerical, Craftsworkers, Operatives, Laborers, and Service Workers. In the NPRM, the Commission proposed definitions for the first six job categories and to adopt the current definitions for the remaining nine job categories. Based upon the record in this proceeding, we have

revised and clarified the definitions for 11 of the 15 job categories.

5. *Analysis of Employee Data.* In the NPRM, the Commission sought comment on whether it should provide workforce statistics for the six new job categories, as it currently does for the original nine job categories. It also sought comment on whether it was required to engage in a competency-based analysis. Based on the record in this proceeding, we have determined that we should maintain our current practice of providing statistical information only for each of the original nine job categories and in the aggregate. In addition, we will not engage in a competency-based analysis when reviewing employee data submitted by cable operators.

6. *Multichannel Video Programming Distributors.* In the NPRM, the Commission proposed to amend its rules to include "any multichannel video programming distributor" within the scope of its cable EEO regulations. In addition, it proposed to adopt the Act's definition of this term. In the Report and Order, we have revised our cable EEO rules to include within their scope multichannel video programming distributors. As such, the cable EEO regulations will be imposed on only those entities which exercise control over multiple channels of video programming offered directly to the public. An entity is deemed to have control over the video programming it distributes if it selects video programming channels or programs and determines how they are presented for sale to consumers.

7. Accordingly, a local exchange carrier (LEC) offering video dialtone service currently does not provide video programming directly to the public or have the ability to exercise control over the selection of video programming provided directly to the public. Consequently, LECs are not under these circumstances subject to the cable EEO provisions. Rather, the entity that exercises control over video programming—the program service provider using the video dialtone transport facility—will under our new rules be subject to our cable EEO rules and policies. Similarly, a licensee or lessee of an MMDS facility which does not exercise control over the video programming distributed (*e.g.*, those operating as common carriers) would not be subject to these cable EEO rules. Rather, our cable EEO requirements would apply to the "wireless cable" provider, whether using owned or leased MDS, MMDS (and/or ITFS) facilities to distribute video programming. Likewise, the licensee of a DBS facility that does not exercise control over video programming distributed would not be subject to our EEO rules. Rather, our EEO requirements would apply to the "provider" of the DBS service whether using owned or leased satellite facilities to distribute video programming. If both the licensee and the customer-programmer exercise control, both would be subject to the EEO rules.

8. In each of the above-listed scenarios, the cable EEO provisions apply to those program packagers who distribute two or more channels of video programming directly to the public. We do not believe, however, that Congress intended to impose the cable EEO requirements on entities that principally own and originate programming, even though a small portion of their business may be devoted to distributing commonly-owned programming in packages to subscribers. We will, therefore, adopt a limited exception to the cable EEO rules to accommodate such programmers. Specifically, a programming service offering six or less channels of commonly-owned video programming over a leased transport facility will not be subject to the cable EEO requirements. However, a programmer offering more than six channels of commonly-owned video programming must comply with the cable EEO requirements. For purposes of this exception, programming services will be considered "commonly-owned" if the same entity holds a majority of the stock (or is a general partner) of each program service.

9. *Effective Date of New Provisions.* Entities using MDS, MMDS, ITFS, DBS, TVRO, and/or video dialtone transport facilities that previously have not been subject to the cable EEO requirements are expected, as of the effective date of these rules, to ascertain the requirements of the cable EEO regulations and to take steps to ensure compliance with all of these provisions, including the reporting requirements. Although the Commission will make an effort to compile a mailing list of the entities newly subject to the cable EEO regulations, it is ultimately the responsibility of each "multichannel video programming distributor" to which the statutory requirement applies to obtain and file the requisite annual reporting forms. Parties seeking to be included on the forms mailing list are requested to provide the Commission (Equal Employment Opportunity Branch, Mass Media Bureau) with a letter indicating the company's name and address and the location(s) of the regulated operation no later than October 1, 1993. We anticipate that entities that are newly subject to the cable EEO rules will file cable annual employment reports (FCC Form 395–A) pursuant to 47 CFR 76.77 beginning with the 1994 Annual Employment Report. However, in order to facilitate the transitional filing period for these entities we will waive the requirement for the submission by these entities of the 12-month hiring and promotion data as requested in Section V. B & C and Section VII of the 1994 Annual Employment Report.

Administrative Matters

Final Regulatory Flexibility Analysis

10. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. *Need and purpose of this action.* This action is taken to implement the equal employment opportunity (EEO) provisions of the Cable Television Consumer Protection and Competition Act of 1992.

II. *Summary of issues raised by comments in response to the Initial Regulatory Flexibility Analysis.* No comments were received in response to the request for comments to the Initial Regulatory Flexibility Analysis. However, comments received in response to the Notice of Proposed Rule Making indicate that smaller cable systems are concerned about the administrative impact of the EEO reporting requirements. One commenter suggested that we eliminate redundant reporting requirements or streamline EEO reporting forms for small cable systems.

III. *Significant alternatives considered and rejected.* The Act streamlines reporting requirements for small cable entities which employ fewer than six full-time employees. Cable entities, which employ six or more full-time employees, must comply with all of the EEO reporting requirements. Thus, we find no reason to provide a more streamlined reporting form for small cable operators as one commenter suggests. We have, however, revised our Form 395–A to require less information than that proposed in the Notice. We believe that this revised form complies with the 1992 Cable Act, collects sufficient data to ascertain EEO compliance; and imposes a minimum burden on cable operators.

IV. *Paperwork Reduction Act Statement:* The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new and modified information collection on the public. Implementation of any new or modified

requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

11. The Secretary shall cause a copy of this Report & Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ordering Clauses

12. Accordingly, it is ordered that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102–385, parts 1, 21, 25, 73, 74, 76, and 100 of the Commission's rules, 47 CFR parts 1, 21, 25, 73, 74, 76, and 100 are amended as set forth below.

13. It is further ordered that the amendments to parts 1, 21, 25, 73, 74, 76, and 100 of the Commission's rules as set forth in this Report and Order will be effective thirty (30) days from the date of publication within the **Federal Register**.

14. It is further ordered that the revised Form 395–A set forth in this Report & Order will be effective ninety (90) days from the date of publication within the **Federal Register**.

15. It is further ordered that the Petition for Further Rule Making filed by NAACP on February 17, 1993, is denied.

16. It is further ordered that MM Docket No. 92–261 is terminated.

List of Subjects

47 CFR Part 1

Reporting and recordkeeping requirements.

47 CFR Part 21

Reporting and recordkeeping requirements, Television.

47 CFR Part 25

Reporting and recordkeeping requirements, Satellites.

47 CFR Part 73

Television broadcasting.

47 CFR Part 74

Television broadcasting.

47 CFR Part 76

Equal employment opportunity, Reporting and recordkeeping requirements.

47 CFR Part 100

Equal employment opportunity.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 1, 21, 25, 73, 74, 76 and 100 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

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. Paragraph (c) is added to § 1.815 to read as follows:

§ 1.815 Reports of annual employment.

* * * * *

(c) *Cross references.*

(1) *Applicability of cable television EEO reporting requirements to MDS and MMDS facilities,* see § 21.920 of this Chapter.

(2) *Applicability of cable television EEO reporting requirements for FSS facilities,* see § 25.601 of this Chapter.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

3. The authority citation for part 21 is revised to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

4. Paragraph (g) is added to § 21.307 to read as follows:

§ 21.307 Equal employment opportunities.

* * * * *

(g) *Cross reference.* Applicability of cable television EEO requirements to MDS and MMDS facilities, see § 21.920.

5. Section 21.920 is added to Subpart K to read as follows:

§ 21.920 Applicability of cable television EEO requirements to MDS and MMDS facilities.

Notwithstanding other EEO provisions within § 1.815 of this chapter and § 21.307, an entity that uses an owned or leased MDS, MMDS and/or ITFS facility to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subpart E of this chapter, if such entity exercises control (as defined in part 76, subpart E of this chapter) over the video programming it distributes.

PART 25—SATELLITE COMMUNICATIONS

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

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

7. Part 25 is amended by adding Subpart I to read as follows:

Subpart I—Equal Employment Opportunities

25.601 Equal employment opportunity requirement.

Subpart I—Equal Employment Opportunities

§ 25.601 Equal employment opportunity requirement.

Notwithstanding other EEO provisions within § 1.815 of this chapter, an entity that uses an owned or leased fixed satellite service facility (operating under this part) to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subpart E of this chapter, if such entity exercises control (as defined in part 76, subpart E of this chapter) over the video programming it distributes.

PART 73—RADIO BROADCAST SERVICES

8. The Authority Citation for part 73 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

9. Paragraph (d) is added to § 73.2080 to read as follows;

§ 73.2080 Equal employment opportunities.

* * * * *

(d) *Mid-term review for television broadcast stations.* The Commission will conduct a mid-term review of the employment practices of each broadcast television station at two and one half years following the station's most recent license expiration date as specified in § 73.1020. The Commission will use the employment profile information provided on the first two Form 395–B reports submitted following such license expiration date to determine whether television station's employment profiles as compared to the applicable labor force data, are in compliance with the Commission's processing criteria. Television broadcast stations which employment profiles fall

below the processing criteria will receive a letter noting any necessary improvements identified as a result of the review.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

10. The Authority Citation for part 74 is revised to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

11. Section 74.996 is added to subpart I to read as follows:

§ 74.996 Applicability of cable EEO requirements to ITFS facilities.

Notwithstanding other EEO provisions within §§ 1.815 and 21.307 of this chapter, an entity that uses an owned or leased MDS, MMDS and/or ITFS facility to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subpart E of this chapter, if such entity exercises control (as defined in part 76, subpart E of this chapter) over the video programming it distributes. With respect to the use of an ITFS facility, the EEO provisions set forth in part 76, subpart E do not apply to an accredited institution or government organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations.

PART 76—CABLE TELEVISION SERVICE

12. The authority citation for part 76 is revised to read as follows:

Authority: Sec. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309; 532; 533; 535; 542; 543; 552; 554, as amended, 106 Stat. 1460.

13. Paragraph (a) of § 76.71 is revised to read as follows:

§ 76.71 Scope of application.

(a) The provisions of this subpart shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system. Cable entities subject to these provisions include those systems defined in § 76.5(a), all satellite master antenna television systems serving 50 or more subscribers, and any multichannel video programming distributor. For purposes of the provisions of this subpart, a multichannel video programming distributor is an entity such as, but not limited to, a cable operator, a multipoint distribution service, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, or a video dialtone program service provider, who makes available for purchase, by subscribers or customers, multiple channels of video programming, whether or not a licensee. Multichannel video programming distributors do not include any entity which lacks control over the video programming distributed. For purposes of this subpart, an entity has control over the video programming it distributes, if it selects video programming channels or programs and determines how they are presented for sale to consumers. Nothwithstanding the foregoing, the regulations in this subpart are not applicable to the owners or originators (of programs or channels of programming) that distribute six or fewer channels of commonly-owned video programming over a leased transport facility. For purposes of this subpart, programming services are "commonly-owned" if the same entity holds a majority of the stock (or is a general partner) of each program service.

* * * * *

14. Paragraph (d) is added to § 76.77 to read as follows:

§ 76.77 Reporting requirements.

* * * * *

(d) *Job category definitions.* The following job category definitions are to be used when classifying employees for purposes of this section:

(1) *Corporate officers.* An employee who is responsible for setting broad policies for the overall operation of the company and who holds a corporate office as designated by the company's governing regulations (*e.g.*, Articles of Incorporation, Articles of Partnership, By-Laws). Examples of positions which may fall within this category include, Chairman of the Board, President and Vice President.

Note: Employees who perform responsibilities falling within the "Corporate Officers" and another of the job categories in paragraphs (d) (2) through (6), should normally be classified in only one of the categories in paragraphs (d) (2) through (6). Specific job titles for categories in paragraphs (d) (1) through (6) are merely illustrative. The proper categorization of any employee depends on the kind and level of the employee's responsibilities and not merely the employee's title. Employees who are appropriately classified into one of the categories in paragraphs (d) (1) through (6) also should fall within the category of paragraph (d)(7).

(2) *General manager.* An employee who exercises overall responsibility for a cable unit or system. Related title may include "systems manager."

(3) *Chief technician.* An employee who has overall responsibility for the system's technical operations. The incumbent ordinarily oversees technical budgets and expenditures, inventory control and fleet management. Individual ordinarily supervises technical personnel in the installation, service, maintenance and construction departments and/or studio. Category includes related titles such as "Technical Operations Manager," "Technical Manager," "Plant Manager," or "Chief Engineer."

(4) *Comptroller.* An employee who manages the activities of the accounting department in the maintenance of the accounting book and other such records.

(5) *General sales manager.* A senior sales or marketing employee who oversees the marketing functions of the system which may include telemarketing in addition to direct sales.

(6) *Production manager.* A senior employee responsible for advertising and/or production of local community programming.

Note: An employee whose responsibilities fall within more than one of the job categories in paragraphs (d) (2) through (6), (i.e., General Manager/Comptroller), should be listed in the one job category which represents the most frequently performed task by that person.

(7) *Managers.* Occupations requiring administrative personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases or segments of a firm's operation or subdepartments of a major department. Incumbents within this category ordinarily exercise authority to hire and terminate employees. This category would include systems managers and assistant managers, program directors and assistant directors, office managers, budget officers, promotions managers, public affairs directors, chief engineers and those holding equivalent positions. Employees appropriately falling within categories in paragraphs (d) (1) through (6) also should fall within this category.

(8) *Professionals.* Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, editors, engineers, lawyers and labor

relations specialists. This category would include persons engaged in the writing, preparation and reproduction of programming, writers or editors, producers and directors of programs, floor directors, announcers, singers, actors, music librarians and those in similar positions.

(9) *Technicians.* Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: computer programmers and operators, engineering aides, junior engineers and electronic technicians. This category also would include strand mappers, audio and video engineers, camera technicians (live or film), film processors, light technicians, drafters and design personnel, electronic converter repair technicians (technicians who perform more than clear and recycle functions) and advertising sales production personnel.

(10) *Sales.* Occupations engaging wholly or primarily in direct selling. This category would include advertising agents, cable service sales personnel (sales representatives), and individuals engaged in direct customer contact for the purposes of product and service promotion. This category includes employees who ordinarily are paid by commissions.

(11) *Office and clerical.* Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: Bookkeepers, cashiers, collectors of bills and accounts, messengers and clerks, office machine operators, stenographers, typists and secretaries, telephone operators, kindred workers and customer service representatives.

(12) *Craft workers (skilled).* Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: Hourly paid supervisors who are not members of management, mechanics, and repair workers, electricians, motion picture projectionists, and splicers.

(13) *Operatives (semi-skilled).* Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training Includes: Apprentices, operatives, truck and tractor drivers, welders, installers, line workers, and trenching machine workers.

Note: Apprentices—Persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship regardless of whether the program is registered with a Federal or State agency.

(14) *Laborers (unskilled).* Workers in manual occupations which generally require no special training. Perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: gardeners and groundskeepers, laborers performing lifting or digging, stage hands and kindred workers.

(15) *Service workers.* Workers in both protective and nonprotective service occupations. Includes: Char workers and cleaners, elevator operators, guards and watch workers, janitors, and kindred workers.

NOTE: A person who does a job falling within more than one of the job categories listed in paragraphs (d) (7) through (15) is to be listed in the job category which represents the most frequently performed task by that person; a person is to be listed only once. Specific job titles listed in the categories above are merely illustrative. The proper categorization of any employee depends on the kind and level of the employee's responsibilities.

PART 100—DIRECT BROADCAST SATELLITE SERVICE

15. The authority citation for part 100 is revised to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 554.

16. Paragraph (e) is added to) § 100.51 to read as follows:

§ 100.51 Equal employment opportunities.

* * * * *

(e) Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased DBS facility operating under this part to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subpart E of this chapter, if such entity exercises control (as defined in part 76, subpart E of this chapter) over the video programming it distributes.

[FR Doc. 93-18775 Filed 8-6-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 61

[CC Docket No. 90-132 FCC 93-355]

Competition in the Interstate Interexchange Marketplace—Petitions for Modification of Fresh Look Policy

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for modification of "fresh look" policy.

SUMMARY: This Memorandum Opinion and Order ("the order") denies petitions by the Ad Hoc Telecommunications Users Committee and Sprint Communications Company LP seeking extension and expansion of the Commission's "fresh look" policy adopted in the August 1, 1991, Report and Order in this proceeding. The order finds that petitioners' arguments were not sufficiently compelling to warrant the extension of "fresh look" and noted that many of petitioners' arguments had been considered and rejected in earlier proceedings. The order rejected Sprint's request to expand "fresh look" to AT&T's 800 service term plans, finding the request procedurally improper and its arguments unconvincing. The order is intended to allow the "fresh look" period to close, as scheduled, after 90 days and to bring stability to the 800 services market.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Andy Lachance, Common Carrier Bureau, Policy and Program Planning Division, (202) 632-1305.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in CC Docket No. 90-132, adopted on July 15, 1993, and released on July 26, 1993.

The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's contractor, International Transcription Service, Inc., at 1919 M Street, NW., room 246, Washington, DC 20554, (202) 857-3800.

Synopsis of Memorandum Opinion and Order

1. On November 6, 1992, the Ad Hoc Telecommunications Users Committee (Ad Hoc) petitioned the Commission requesting extension of the "fresh look" policy that was adopted in the Commission's August 1, 1991 Report and Order in this proceeding, 6 FCC Rcd 5880 (1991), 56 FR 55235 (October 25, 1991). Ad Hoc asks that the "fresh look'

period be extended until ninety days after implementation of an automated notice-and-acceptance functionality in the 800 database system. On December 2, 1992, Sprint Communications Company LP (Sprint) filed an emergency petition for declaratory ruling asking the Commission to revise its "fresh look" policy by extending it from 90 to 180 days and expanding it to include all of AT&T's 800 term plans.

2. In the Report and Order, we found that AT&T maintained a market advantage in the provision of 800 and inbound services due to the lack of 800 number portability. (Prior to May 1, 1993, customers could not change 800 service providers without also having to change their 800 numbers.) We found further that AT&T had a unique ability to leverage its market power in 800 and inbound services by bundling these services with other services. We found that through bundling, AT&T could use its market power over certain 800 service customers to gain an advantage in other markets. Thus, we prohibited AT&T from future bundling of 800 services in integrated services packages until 800 numbers became portable. However, we allowed Tariff 12 options on file as of August 1, 1991, to remain in effect, even if they included inbound service. In addition, we provided that AT&T must permit customers with Tariff 12 packages that include inbound service to terminate these packages within ninety days of the time 800 numbers became portable without the imposition of any termination liabilities—the so-called "fresh look" requirement.

3. On April 17, 1992, in the Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 2677 (1992), 57 FR 20206 (May 12, 1992), we modified the bundling restrictions to prohibit AT&T from offering bundled service arrangements that included "old" 800 numbers (numbers in use by the customer prior to April 17, 1992), and to apply to Tariff 16s and other tariffed service offerings that included 800 service. Likewise, we modified the grandfathering provision to allow the customers of Tariff 12s, Tariff 16s, or other tariffed offerings with bundled 800 service, to continue to take service under those arrangements, provided that the customer had signed a final contract for service or begun taking service on or before April 16, 1992. Finally, we reaffirmed the fresh look requirement and applied it to all grandfathered Tariff 12, Tariff 16, and other bundled service customers.

4. Fresh look rights were triggered by the implementation on May 1, 1993, of a new 800 data base system of 800 access which permits 800 number portability. Under the 800 data base system, all 800 customer service records are loaded into a central data base known as the service management system (SMS). The only entity authorized to input a new 800 customer service record or change an existing record in the SMS is the "responsible organization" or "RESPORG" designated by the customer. In the event that multiple carriers provide service for a particular 800 number, the RESPORG for that record may not add traffic to another carrier's network without first notifying that carrier and obtaining its acceptance of the service order. Initially, the industry will use manual notice-and-acceptance procedures. It is expected that automated procedures will replace these manual procedures in May 1994.

5. The order denies the Ad Hoc and Sprint petitions. It finds that none of the reasons given by the petitioners warrant an extension of the ninety-day "fresh look" period. Sprint argues that many customers will adopt a "wait and see attitude" and hold off on a change in 800 service provider until they are comfortable with the 800 data base and related systems. This argument is not convincing. Commission staff have closely monitored the progress of 800 data base implementation to ensure that the necessary network-related work was complete before the system was implemented. Moreover, our monitoring efforts have included monthly meetings attended by representatives of the large users that are subject to the "fresh look" policy. As a result, we do not believe that users harbor the grave concerns Sprint identifies or that these types of concerns would still be justified.

6. The order also rejects Ad Hoc's argument that customers seeking multiple carrier routing arrangements may be reluctant to change carriers without automated notice-and-acceptance procedures. In the 800 Data Base Proceeding, we rejected assertions that customers would be unwilling to use multiple carrier routing without automated notice-and-acceptance. No party presents any evidence here that would cause us to change our view. In particular, no one demonstrates why manual procedures will not suffice as an interim approach.

7. Sprint claims, further, that "[t]here are a number of as-yet unresolved issues relating to the administration and operation of the SMS/800 database which directly affect how easy it will be for customers to subscribe to multiple 800 service providers." Among the issues Sprint identifies, virtually all were resolved prior to the implementation of number portability. The only previously unresolved "area of uncertainty;" claimed by Sprint concerns the availability of a view-only functionality (which enables carriers, other than the RESPORG, serving a particular 800 number to view, without changing, the record for that number). While this functionality has been scheduled for implementation in October 1993, Sprint has not demonstrated that its unavailability until then will affect the ability to customers to subscribe to multiple 800 service providers.

8. Sprint and MCI also raise the possibility that AT&T may be able to dissuade customers from exercising their "fresh look" rights by refusing to provide only part of the service for a particular 800 number. There is no evidence in the record to support this allegation. Moreover, we have previously held that basic 800 access service includes area-of-service routing, which allows customers to divide their 800 traffic among different carriers based on the local access transport area (LATA) in which the call originates. This should ensure that users will be able to split their traffic between AT&T and other carriers if they so choose. Finally, with the advent of 800 number portability, any customer eligible for "fresh look" may now take all of its 800 business to an AT&T competitor if AT&T does not offer the service the customer seeks.

9. Finally, Sprint, TRA and United/Covia ask the Commission to extend the "fresh look" period in order to allow customers adequate time to complete the carrier selection process and migrate traffic to new carriers. Customers and carriers have known about "fresh look" since August of 1991. There is no valid reason why customers should not have begun the process of soliciting bids and considering their various service options in time for them to exercise "fresh look" during the ninety-day period. United/Covia claims that migration of its traffic to a new carrier will take longer than ninety days. This is not a reason, we believe, to extend "fresh look" as United/Covia requests. It is not our intention, in setting the "fresh look" period at ninety days, to ensure that each and every customer with "fresh look" rights is able to migrate all of its traffic off AT&T's network in the allotted time.

10. We also deny Sprint's request to expand "fresh look" to apply to customers of AT&T's 800 term plans. We note at the outset that Sprint filed its petition as a prayer for an emergency declaratory ruling, an inappropriate vehicle for Sprint to raise this issue.

Section 1.2 of our Rules states that "[t]he Commission may, * * * issue a declaratory ruling terminating a controversy or removing uncertainty."[1] In adopting the 800 and inbound service bundling restrictions, we stated unequivocally that these restrictions applied only to certain of AT&T's bundled offerings. Sprint does not allege, and we do not find, any language in either the Report and Order or the Reconsideration Order that might lend itself to an interpretation that the 800 and inbound bundling restrictions might apply to AT&T's 800 term plans. Sprint should have pursued the relief it seeks in a petition for reconsideration of the Report and Order or a petition for rulemaking, not a petition for declaratory ruling.

11. We find further that Sprint's petition fails on the merits. Sprint contends that 800 term plan customers should get a "fresh look" because they are less sophisticated than other users and may have been unaware that numbers would soon be portable when they signed their long-term contracts. However, 800 term plan customers are not necessarily smaller or less sophisticated than customers with bundled packages of services. Moreover, the 800 data base proceeding has been ongoing since 1986. Thus we are not convinced by arguments that term plan customers were generally unaware of the imminence of number portability.

12. In any event, Sprint's argument misconstrues the purpose of "fresh look." "Fresh look" is part of a package of remedies designed to address a specific practice—bundling by AT&T of 800 or inbound service with other services. "Fresh look" was never intended to apply in every instance in which some carrier might have had a competitive advantage with respect to a particular customer as a result of the lack of 800 number portability. In particular, "fresh look" was never intended to apply to 800 term plans offered by AT&T or other carriers, and we do not find it appropriate to extend fresh look to these situations now.

Ordering Clause

13. Accordingly, pursuant to authority contained in sections 1, 4, and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, and § 1.2 of the Commission's Rules, 47 CFR 1.2, it is ordered that the petition of the Ad Hoc Telecommunications Users Committee for expedited modification of fresh look policy and Sprint Communications Company's emergency petition for declaratory ruling are denied.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–18884 Filed 8–6–93; 8:45 am]

BILLING CODE 6712–01–M

[1] 47 CFR 1.2.

---

47 CFR Parts 61, 64 and 69

[CC Docket No. 91–115; FCC 93–383]

Tariffing Requirements for Billing Name and Address

AGENCY: Federal Communications Commission.

ACTION: Final Rule; suspension of effective date.

SUMMARY: On May 13, 1993, the Commission adopted a Second Report and Order establishing rules requiring local exchange carriers to provide billing name and address information on a common carrier basis to telecommunications service providers for billing purposes. The Commission also established rules requiring local exchange carriers to notify their customers that their billing name and address information may be provided to telecommunications service providers for billing purposes, and to obtain authorization from customers with unlisted or nonpublished telephone numbers prior to disclosing their billing name and address information. On August 4, 1993, the Commission on its own motion stayed the effective date of several of these requirements to give carriers sufficient time to provide notification and obtain authorization from their customers, and give end users an adequate opportunity to weigh their options regarding disclosure of their billing name and address information. Because the Commission revises on its own motion the deadlines for several of these requirements, we dismiss as moot several petitions for stay of the Second Report and Order pending before us.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Tariff Division, Common Carrier Bureau, (202) 632–6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order adopted August 4, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, suite 140, 2100 M Street, NW., Washington, DC 20037.

Regulatory Flexibility Analysis

We have determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange carriers do not qualify as small entities because they have a monopoly on ubiquitous access to the subscribers in their service area. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. *See* 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant effect on a substantial number of "small entities."

Summary of Report and Order

On June 9, 1993, the Commission adopted the Second Report and Order in this docket 58 FR 36143, July 6, 1993, requiring local exchange carriers (LECs) to provide their customers' billing name and address (BNA) information to interexchange carriers and other telecommunications service providers on a common carrier basis for this purpose. LECs were required to file tariffs for BNA provision within 90 days of the release date of the Second Report and Order, or September 8, 1993. The Commission also required LECs to notify their subscribers that when they use a LEC use card or accept a collect or third party call, their BNA may be disclosed to the serving interexchange carriers and other telecommunications service providers to facilitate billing. As a further precaution, LECs were prohibited from releasing the BNA information associated with unlisted and nonpublished telephone numbers without the customer's consent, and were required to obtain a one-time written authorization for BNA disclosure from existing and future LEC cardholders having nonpublished or unlisted numbers. LECs were given 60 days from the release date of the Order, or August 9, 1993, to provide this notification and obtain this authorization.

LECs will now be given until February 9, 1994, to provide notification and obtain authorization from their

customers with nonpublished or unlisted telephone numbers for disclosure of their BNA information to interstate service providers. LECs are also required to file tariff revisions for the provision of the BNA information of calling card customers with nonpublished or unlisted telephone numbers no later than February 9, 1994, on 45 days' notice. Finally, the Commission extended the deadline for providing notification to customers with listed telephone numbers to October 24, 1993, the date LEC tariffs providing BNA will be scheduled to take effect. The Commission believes these revisions should give carriers sufficient time to provide notification and obtain authorization from their customers, and should give end users an adequate opportunity to weigh their options regarding disclosure of their BNA information. However, the Commission saw no need at this time to modify the September 8, 1993 date for filing tariffs for the provision of BNA associated with customers who have listed telephone numbers.

On July 2, 1993, the United States Telephone Association (USTA) and several Bell Operating Companies (BOCs) filed a petition for stay of the Second Report and Order pending reconsideration. On July 8, 1993, the United and Central Telephone Companies (United) filed a petition for limited stay of the written authorization requirement of the Second Report and Order. On July 9, 1993, GTE Service Corporation (GTE) filed a petition for stay of the authorization requirement and the notification requirement. On July 12, 1993, U.S. Intelco Networks, Inc. (Intelco) filed a petition for stay of all the requirements of the Second Report and Order. Because the Commission is changing certain of the deadlines established in the Second Report and Order as they relate to customers with nonpublished or unlisted telephone numbers, GTE's and United's petitions for stay are now moot, and USTA's and Intelco's petitions are now moot to the extent they seek stay of these requirements. The Commission denied the petitions for stay of the Second Report and Order filed by USTA and Intelco to the extent they are not moot because these parties failed to show that they would suffer irreparable harm in the absence of a stay, as required by Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir 1958).

Ordering Clauses

Accordingly, *it is ordered*, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.108 of the Commission's Rules, 47 CFR 1.108, that In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91–115, Second Report and Order, FCC 93–254, released June 9, 1993 *is modified* to reflect the revisions to the deadlines established in paragraphs 45 and 46 of that Order, as specified in paragraph 3, *supra*, effective upon publication in the **Federal Register**.[1]

It is further ordered that the petition for stay filed by United States Telephone Association, Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., New York Telephone Company and New England Telephone and Telegraph Company, Southwestern Bell Telephone Company, and US West Communications, Inc., *is dismissed as moot*, to the extent indicated above, and otherwise *is denied*.

It is further ordered that the petition for limited stay filed by United and Central Telephone Companies *is dismissed as moot*.

It is further ordered that the petition for limited stay filed by GTE Service Corporation *is dismissed as moot*.

It is further ordered that the petition for limited stay filed by U.S. Intelco Networks, Inc. *is dismissed as Moot*, to the extent indicated above, and otherwise *is denied*.

The effective date of August 5, 1993 of the amendments to parts 61, 64, and 69 published at 58 FR 36143, July 6, 1993 is suspended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–19166 Filed 8–5–93; 3:47 pm]

BILLING CODE 6712–01–M

[1] See 5 U.S.C. 553(d)(1).

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 709, 726, 737, and 752

[AIDAR Notice 93–2]

Miscellaneous Amendments

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development Acquisition Regulation (AIDAR) is being amended to make miscellaneous changes concerning organizational conflict of interest, disadvantaged enterprises, and advisory and assistance services.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Frances M. Maki, FA/PPE, concerning organizational conflict of interest and advisory and assistance services, and Ms. Kathleen O'Hara, FA/PPE, concerning disadvantaged enterprises, room 1600I, SA–14, Agency for International Development, Washington, DC 20523–1435. Telephone (703) 875–1534.

SUPPLEMENTARY INFORMATION: A brief summary of the changes being made to the AIDAR follows:

A new clause is being added which requires the contractor to notify the Contracting Officer in writing if after award it discovers either an actual or potential organizational conflict of interest (OCI) with respect to the contract. This clause is used if one of the FAR OCI solicitation clauses, FAR 52.209–7 or 52.209–8, is used. It differs from the FAR clauses in that it is specifically for OCI discovered during the performance of a contract.

The coverage on disadvantaged enterprises is amended to add a limitation on subcontracting under contracts for technical assistance services which are awarded using less than full and open competition under the authority of 706.302–71.

Section 737.206(c), thresholds for Executive approval for advisory and assistance (A&A) services, has been amended to raise the thresholds. Based on experience with A&A services and considering the Agency's project approval process, AID has decided to increase the threshold for A&A Executive approval.

The changes being made by this Notice are administrative and are not considered significant rules under FAR Section 1.301 or Subpart 1.5, nor major rules as defined in Executive Order 12292. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act. Because of the nature and subject matter of this Notice, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this Notice or any other part of the AIDAR at any time. Comments or questions may be addressed as specified

in the "FOR FURTHER INFORMATION CONTACT" section of the preamble.

List of Subjects in 48 CFR Parts 709, 726, 737, and 752

Government procurement.

Accordingly, for the reasons set out in the preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citations in parts 709, 726, 737, and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., P. 435.

PART 709—CONTRACTOR QUALIFICATIONS

Subpart 709.5—Organizational Conflicts of Interest

2. A new section 709.507–2 is added to read as follows:

709.507–2 Contract clause.

(a)–(b) [Reserved]

(c) In order to avoid problems from organizational conflicts of interest that may be discovered after award of a contract, the clause found at 752.209–71 should be inserted in all contracts whenever the solicitation includes one of the FAR organizational conflict of interest solicitation clauses, FAR 52.209–7 or 52.209–8.

PART 726—OTHER SOCIOECONOMIC PROGRAMS

Subpart 726.3—Subcontracting Requirement

3. The title of section 726.301 is revised to read as follows:

726.301 Requirement for subcontracting with disadvantaged enterprises.

* * * * *

4. Section 726.302 is added to read as follows:

726.302 Limitations on subcontracting.

The contracting officer shall insert the clause at 752.226–3, Limitations on Subcontracting, in any solicitation and contract for technical assistance services which is to be awarded under the authority of 706.302–71.

PART 737—SERVICE CONTRACTING

Subpart 737.2—Advisory and Assistance Services

737.206 [Amended]

5. Section 737.206, paragraph (c)(3) is amended by removing the last sentence.

6. Also in section 737.206, a new paragraph (c)(4) is added to read as follows:

737.206 Requesting activity responsibilities.

* * * * *

(c) * * *

(4) In addition to the requirements in paragraphs (c) (1) through (3), approval by the AID Advisory and Assistance Executive (see 737.270) is required for:

(i) Contracts for A&A services which benefit the host country and are funded under a project agreement when the estimated value is $15 million or more for the first year of the contract.

(ii) Contracts for A&A services which are not funded under a project agreement, regardless of the beneficiary, when the estimated value is $1 million or more for the first year of the contract.

7. Section 737.270 is revised to read as follows:

737.270 AID Advisory and assistance executive.

As required by OMB Circular A–120, the Administrator has designated the Associate Administrator for Finance and Administration as the AID Advisory and Assistance Executive, responsible for assuring that advisory and assistance acquisitions comply with the terms of OMB Circular A–120.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

8. A new section 752.209–71 is added to read as follows:

752.209–71 Organizational conflicts of interest discovered after award.

As prescribed in 709.507–2, for use if one of the FAR organizational conflict of interest solicitation clauses, FAR 52.209–7 or 52.209–8, is used.

Organizational Conflicts of Interest Discovered After Award (June 1993)

(a) The Contractor agrees that, if after award it discovers either an actual or potential organizational conflict of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action(s) which the Contractor has taken or proposes to take to avoid, eliminate or neutralize the conflict.

(b) The Contracting Officer shall provide the contractor with written instructions concerning the conflict. AID reserves the right to terminate the contract if such action is determined to be in the best interest of the Government.

(End of Clause)

9. A new section 752.226–3 is added to read as follows:

752.226–3 Limitation on subcontracting.

As prescribed in 726.302, insert the following clause:

Limitations on Subcontracting (June 1993)

By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract, at least 51 percent of the cost of contract performance incurred for personnel shall be expended for employees of the contractor or employees of other disadvantaged enterprises eligible under the terms of 706.302–71. For the purposes of this clause, independent contractors hired by the contractor shall be considered employees of the contractor.

(End of Clause)

Dated: June 9, 1993.

John F. Owens,

Procurement Executive.

[FR Doc. 93–18623 Filed 8–6–93; 8 45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107–3068; I.D. 080393D]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the pelagic shelf rockfish species category in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pelagic shelf rockfish species category total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the pelagic shelf rockfish species category TAC for the Central Regulatory Areas was established by the final 1993 initial specifications (58 FR 16787, March 31, 1993) as 4,450 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), established in accordance with § 672.20(c)(2)(ii), a directed fishing allowance for the pelagic shelf rockfish species category of 4,350 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the pelagic shelf rockfish species category in the Central Regulatory Area effective from 12 noon, A.l.t., August 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 4, 1993.

David S. Crestin,

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

[FR Doc. 93–18953 Filed 8–4–93; 12:00 pm]

BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 921107–3068; I.D. 080393E]

Groundfish of the Gulf of Alaska

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

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of the shortraker/rougheye (SRRE) rockfish species category in the Eastern Regulatory Area of the Gulf of Alaska (GOA) and is requiring that incidental catches be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the SRRE rockfish species category total allowable catch (TAC) in this area has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 4, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Goundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the SRRE rockfish species category TAC for the Eastern Regulatory Area was established by the final 1993 initial specifications (58 FR 16787, March 31, 1993) as 513 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for the SRRE rockfish species category in the Eastern Regulatory Area has been reached. Therefore, NMFS is requiring that further catches of the SRRE rockfish species category in the Eastern Regulatory Area be treated as prohibited species in accordance with § 672.20(e)(3), effective from 12 noon, A.l.t., August 4, 1993, through 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 4, 1993.

David S. Crestin,

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

[FR Doc. 93–18952 Filed 8–4–93; 11:59 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 151
Monday, August 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.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 801

FGIS To Change Protein Reference Method

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to revise the regulations under the United States Grain Standards Act (USGSA), as amended. Specifically, FGIS proposes to adopt the Combustion method as the chemical reference method for determining the protein content in both wheat and soybeans. FGIS also proposes to eliminate the use of the Kjeldahl method for official protein inspections and to more clearly describe the application of tolerances to official near-infrared spectroscopy (NIRS) type instruments.

DATES: Comments must be submitted on or before September 8, 1993.

ADDRESSES: Written comments must be submitted to George W. Wollam, Federal Grain Inspection Service, USDA, room 0624, South Building, P.O. Box 96454, Washington, DC 20090–6454 and telecopy users may send responses to the automatic telecopier machine at (202) 720–4628.

All comments received will be made available for public inspection during regular business hours in room 0624, South Building, 1400 Independence Avenue, SW., Washington, DC (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George W. Wollam, Federal Grain Inspection Service, USDA, room 0624, South Building, P.O. Box 96454, Washington, DC 20090–6454; Telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as non-major because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

David R. Galliart, Acting Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (4 U.S.C. 601 *et seq.*), because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in the regulations issued under the United States Grain Standards Act have been previously approved by OMB under control numbers 0580–0011 and 0580–0013.

Background

FGIS currently uses the Kjeldahl method as the primary reference method by which official near-infrared spectroscopy (NIRS) protein-measuring instruments are calibrated. NIRS instruments are used to determine protein in wheat and soybeans in both domestic and export markets. FGIS is proposing to replace the Kjeldahl method with the Combustion method as the chemical reference method.

The Combustion method that FGIS is proposing to adopt uses a nitrogen analyzer consisting of a computer-controlled closed-system combustion process and a thermal conductivity detector. This method has been accepted (August 1992) by the AOAC International (formerly known as the Association of Official Analytical Chemists) as an alternative to the Kjeldahl method for protein determinations in cereal grains and oilseeds and has been approved (September 1992) by the American Association of Cereal Chemists (AACC) for protein determination in cereal grain.

Changing from the Kjeldahl method to the Combustion method will provide many benefits to FGIS. The Combustion method does not use hazardous chemicals or produce the environmental pollutants associated with the Kjeldahl method. Also, the shorter analysis time for the Combustion method allows a larger sample throughput, permitting a more effective evaluation of the NIRS instrument calibrations.

FGIS has extensively compared the protein results obtained using the Combustion method and the Kjeldahl method. Statistical analysis of these data shows that each method is capable of providing equally precise and reproducible protein results; however, the Combustion method has a general tendency to yield slightly higher results than the FGIS Kjeldahl method. The observed differences are approximately +0.03 percent protein for wheat and +0.3 percent protein for soybeans. These differences are believed to be due to more effective nitrogen recovery by the Combustion method than by the Kjeldahl method.

The more effective nitrogen recovery of the Combustion method should reflect the true protein content of U.S. wheat and soybeans more accurately than the current Kjeldahl reference method. A change of +0.03 percent protein for wheat should have minimal impact on domestic and export wheat markets. The change of +0.5 percent protein for soybeans should have minimal impact on domestic and export soybean markets because the trading price of soybeans is not routinely based on the protein content.

The NIRS instrument maintenance tolerances are used to maintain

consistent results among official protein and oil determinations.

All NIRS instruments are adjusted to give consistent results on the national Standard Reference Samples (SRS). The adjustments are based on the differences between each official NIRS instrument's results for the SRS and the average of the FGIS national standard NIRS instruments' results for the SRS. These same FGIS national standard NIRS instruments are calibrated and routinely standardized to the FGIS chemical reference method.

Copies of the chemical reference methods used by FGIS are available from David Funk, FGIS, USDA, 10383 N. Executive Hills Blvd., Kansas City, Missouri 64153.

Proposed Action

FGIS proposes to:

1. Revise § 801.7 (The heading of) to reflect the deletion of Kjeldahl analyzers.

2. Revise § 801.7(a) to more clearly describe the application of tolerances for official NIRS wheat protein analyzers.

3. Revise § 801.7(b) to more clearly describe the application of tolerances for official NIRS soybean protein and oil analyzers.

4. Delete § 801.7(c) to reflect the deletion of Kjeldahl protein as an official inspection service.

List of Subjects in 7 CFR Part 801

Administrative practice and procedure, Grain, Export.

For reasons set out in the preamble, 7 CFR part 801 is proposed to be amended as follows:

1. Authority citation for part 801 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 801.7 is revised to read as follows:

§ 801.7 Tolerances for near-infrared spectroscopy (NIRS) analyzers.

(a) NIRS wheat protein analyzers. The maintenance tolerance for the NIRS analyzers used in performing official inspection for determination of wheat protein content shall be ± 0.15 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS Combustion method.

(b) NIRS soybean oil and protein analyzers. The maintenance tolerance for the NIRS analyzers used in performing official inspection for determination of soybean oil shall be ± 0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; and for determination of protein content shall be ± 0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS Combustion method.

Dated: July 21, 1993.

David R. Galliart,

Acting Administrator.

[FR Doc. 93–18866 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 1030

[DA–93–20]

Milk in the Chicago Regional Marketing Area; Notice of Proposed Revision of Supply Plant Shipping Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rules.

SUMMARY: This notice invites public comments on a proposal to reduce the supply plant shipping standards for the month of September 1993 under the Chicago Regional order. The proposal would reduce the shipping percentage for pooling individual supply plants to 2 percent of receipts and the shipping percentage for units of supply plants to 5 percent of receipts. The reductions were requested by Central Milk Producers Cooperative, a federation of cooperatives that represents producers who supply the market. The organization contends that the action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants.

DATES: Comments are due no later than August 16, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P. O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P. O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed revision of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended, provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1030.7(b)(5) of the order, the revision of certain provisions of the order regulating the handling of milk in the Chicago Regional marketing area is being considered for the month of September 1993.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures to make the

action effective for the month of September 1993.

All written submission made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages for the month of September 1993. The proposed action would reduce the shipping percentage for individual supply plants by 3 percentage points (from 5 to 2 percent of receipts) and for supply plant units by 5 percentage points (from 10 to 5 percent of receipts) during September 1993.

Currently, the order provides that individual supply plants must ship at least 5 percent of milk receipts to other plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes during the months of September through December. During other months the shipping standards are 3 percent for individual plants and 6 percent for a unit of plants.

With regard to the current supply plant shipping standards, it is noted that the annual Code of Federal Regulations specifies shipping standards of one percent for individual plants and four percent for a supply plant unit for the months of September through December. Such shipping percentages are the result of a revision published on December 27, 1991 (56 FR 66953). Such revision was to be applicable only for one month, but, was inadvertently included in the annual Code of Federal Regulations.

The Chicago order provides that the Market Administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points for up to 3 months. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards by up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of the producers who supply the market. CMPC contends that a reduction of shipping percentages is necessary to prevent uneconomic shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and sales estimates, CMPC has requested that the market administrator reduce the shipping percentages by 2 percentage points for the month of August. A reduction of the shipping percentages for August is being considered by the Market Administrator.

Based on the most recent supply and demand projections, CMPC contends a further reduction of shipping percentages, beyond the request to the Market Administrator, will be necessary.

CMPC contends that in order to make the most efficient use of available milk supplies, as much as possible of nearby milk supplies will have to be utilized with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the month of September 1993, CMPC contends that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to 2 and 5 percent of receipts, respectively.

In view of the supply/demand relationship, it may be necessary to reduce the supply plant shipping percentages as proposed to provide for the efficient and economic marketing of milk during the month of September 1993.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

The authority citation for 7 CFR part 1030 continues to read as follows:

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

Dated: August 3, 1993.

Richard M. McKee,

Deputy Director, Dairy Division.

[FR Doc. 93–18989 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–101–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. This proposal would require replacing the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves. This proposal is prompted by a fire resistance test of the hydraulic EDP, associated hoses, and couplings installed on the number 2 and number 3 engines, which revealed that the pump case drain line quick release couplings leaked hydraulic fluid. The actions specified by the proposed AD are intended to prevent hydraulic fluid leaking from the pump case drain line quick release coupling, which could fuel the flames in the event of an engine fire.

DATES: Comments must be received by October 4, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-101-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-101-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. The CAA advises that a fire resistance test of the hydraulic engine driven pump (EDP), associated hoses, and couplings installed on the number 2 and number 3 engines of these airplanes revealed that the pump case drain line quick release couplings leaked hydraulic fluid. Two couplings on the number 2 and number 3 engines are susceptible to hydraulic fluid leakage: one at the end of the pump case drain line which connects to the hydraulic EDP, and one at the end of the pump case drain line which connects to the engine bay/pylon interface. This condition, if not corrected, could result in hydraulic fluid leaking from the pump case drain line quick release couplings, which could fuel the flames in the event of an engine fire.

British Aerospace has issued Service Bulletin SB.29-31-01339A, dated May 24, 1993, that describes procedures for replacing the quick release coupling halves on each end of the pump case drain line on the hydraulic EDP on the number 2 and number 3 engines with improved fire resistant coupling halves. The improved coupling halves are comprised of an inner valve and an outer nut with firesleeves. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacing the quick release coupling halves on each end of the pump case drain line on the hydraulic EDP on the number 2 and number 3 engines with improved fire resistant coupling halves. The action would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,590, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

British Aerospace: Docket 93-NM-101-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes; serial numbers E3001 through E3207 inclusive, E3209 through E3220 inclusive, and E3222; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent hydraulic fluid leaking from the pump case drain line quick release couplings, which could fuel the flames in the event of an engine fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves, in accordance with British Aerospace Service Bulletin SB.29-31-01339A, dated May 24, 1993.

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

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

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 3, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-18924 Filed 8-6-93; 8:45 am]

BILLING CODE 4910-13-P

---

14 CFR Part 39

[Docket No. 93-NM-66-AD]

Airworthiness Directives; McDonnell Douglas Model DC-8-70 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-8-70 series airplanes. This proposal would require inspections to detect cracking in the front spar pylon support attach fittings on the number 2 and number 3 engines, and repair, if necessary. This proposal is prompted by reports of cracking in the pylon support fittings of the front spar on the number 2 and number 3 engines. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the pylon-to-wing main load path.

DATES: Comments must be received by October 4, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-66-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425.

FOR FURTHER INFORMATION CONTACT: Mike Lee, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5325; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-66-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-66-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Recently, three operators of McDonnell Douglas Model DC-8-70 series airplanes reported finding cracks in the front spar pylon support fittings on the number 2 and number 3 engines. Analysis indicates that such cracking may be attributed to preload during installation of these fittings. Such cracking in these fittings, if not detected and corrected, could result in structural degradation of the pylon-to-wing main load path.

The FAA has reviewed and approved McDonnell Douglas DC-8-70 Alert Service Bulletin A57-99, dated December 10, 1992, that describes procedures for eddy current inspections of the front spar pylon support fittings on the number 2 and number 3 engines.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive eddy current inspections of the front spar pylon support fittings on the number 2 and number 3 engines. The actions would be required to be accomplished in accordance with the service bulletin described previously. This action also proposes that findings of cracks be repaired.

There are approximately 57 Model DC-8-70 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 37 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 252 work hours per airplane to accomplish the proposed actions (if the wing leading edge must be removed to perform the proposed inspections), and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $512,820, or $13,860 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

However, if lower access doors have been installed on the wing leading edge of these airplanes, it would take approximately 6 work hours per airplane to accomplish the proposed actions at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of these airplanes is estimated to be $12,210, or $330 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant

rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 93–NM–66–AD.

Applicability: Model DC–8–72, –72F, –73, and –73F series airplanes, as listed in McDonnell Douglas DC–8–70 Alert Service Bulletin A57–99, dated December 10, 1992, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent reduced structural integrity of the pylon-to-wing main load path, accomplish the following:

(a) Perform an eddy current inspection of the front spar pylon support fittings (part numbers 5753054–501 and –502) on the number 2 and number 3 engines, in accordance with McDonnell Douglas DC–8–70 Alert Service Bulletin A57–99, dated December 10, 1992, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Thereafter, repeat this inspection at intervals not to exceed 720 landings.

(1) For the number 2 engine: Prior to the accumulation of 4,000 landings since installation of the engine, or within 6 months after the effective date of this AD, whichever occurs later, unless accomplished previously within the last 720 landings prior to the effective date of this AD.

(2) For the number 3 engine: Prior to the accumulation of 4,000 landings since installation of the engine, or within 6 months after the effective date of this AD, whichever occurs later, unless accomplished previously within the last 720 landings prior to the effective date of this AD.

(b) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Repeat the inspection, thereafter, at intervals not to exceed 720 landings in accordance with McDonnell Douglas DC–8–70 Alert Service Bulletin A57–99, dated December 10, 1992.

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

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

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

Issued in Renton, Washington, on August 3, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–18925 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 93–NM–95–AD]

Airworthiness Directives; Learjet Model 55, 55B, and 55C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Learjet Model 55, 55B, and 55C airplanes. This proposal would require modification of the wiring inside the left- and right-hand generator interface boxes and between these boxes. This proposal is prompted by a report that an electrical short occurred in the generator interface box wiring during flight on a Learjet Model 55 airplane and resulted in the failure of both generators. The actions specified by the proposed AD are intended to prevent the loss of both generators during flight, which could result in the possible loss of all communication and navigation equipment.

DATES: Comments must be feceived by October 4, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Learjet Corporation, Customer Services, P.O. Box 7707, Wichita, Kansas 67277–7707. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–95–AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-95-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received a report that an electrical short occurred in the generator interface box wiring during flight on a Learjet Model 55 airplane. This single fault resulted in the failure of both generators. A circuit breaker was found to be tripped and could not be reset. The airplane had sufficient electrical power from the battery to land safely at a nearby landing site.

Further investigation after landing revealed that a wire had shorted to ground. The short was on an interconnect wire between the left- and right-hand generator interface boxes. The function of the interconnect wire is to carry a generator current limit signal (+28 VDC) to a voltage regulator while the airplane is on the ground and only one generator is operating. The short caused both generators to go off line by tripping a circuit breaker (that resulted in the loss of one generator) and opening a current limiter (that resulted in the loss of the other generator). Apparently, the interconnect wire had been damaged during manufacturing or maintenance action.

An electrical short in the generator interface box wiring could result in the loss of both generators during flight. If an in-flight incident similar to that reported were to occur and the battery is unable to provide sufficient electrical power, or a suitable landing site is not within close proximity, the flight crew could lose all communication and navigation equipment.

The FAA has reviewed and approved Learjet Service Bulletin SB 55-24-4, dated May 3, 1993, that describes procedures for modification of the wiring inside the left- and right-hand generator interface boxes and between these two boxes. Accomplishment of this modification will ensure that both generators will not drop off line in the event an electrical short circuit occurs in the generator control system wiring. The service bulletin also describes procedures to perform an operational test of the DC power distribution system following modification of the wiring.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the wiring inside the left- and right-hand generator interface boxes and between these two boxes. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 145 Model 55, 55B, and 55C airplanes of the affected design in the worldwide fleet. The FAA estimates that 102 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $73 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $46,716, or $458 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Learjet: Docket 93-NM-95-AD.

Applicability: Model 55, 55B, and 55C airplanes; serial numbers 55-003 through 55-147 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of both generators during flight, accomplish the following:

(a) Within 100 hours time-in-service or 90 days after the effective date of this AD, whichever occurs later, modify the wiring inside the left- and right-hand generator interface boxes and between these two boxes, and perform an operational test of the DC power distribution system in accordance with Learjet Service Bulletin SB 55-24-4, dated May 3, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

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

Issued in Renton, Washington, on August 3, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-18926 Filed 8-6-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-64-91]

RIN 1545-AQ88

Capitalization and Inclusion in Inventory of Certain Costs

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to accounting for costs incurred in producing property and acquiring property for resale. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Omnibus Reconciliation Act of 1989. These proposed regulations primarily affect taxpayers subject to section 263A that acquire property for resale.

DATES: Written comments and requests for a public hearing must be received by October 8, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R (IA–62–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Rosemary DeLeone or Harry-Todd Astrov of the Office of the Assistant Chief Counsel, Income Tax and Accounting, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 263A (the uniform capitalization rules) was enacted as part of Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 1986–3 C.B. (Vol. 1) (the 1986 Act). The statute was amended as part of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, 101 Stat. 1330, 1987–3 C.B. Vol. 1 (the 1987 Act), the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647, 102 Stat. 3342, 1988–3 C.B. (Vol. 1) (the 1988 Act), and the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 103 Stat. 2106 (the 1989 Act).

Section 263A generally requires the capitalization of direct costs and indirect costs properly allocable to real property and tangible personal property produced by a taxpayer. Section 263A also generally requires the capitalization of direct costs and indirect costs (including purchasing, handling, and storage costs) properly allocable to real property and personal property acquired by a taxpayer for resale.

On March 30, 1987, and August 7, 1987, temporary regulations under section 263A were published in the **Federal Register**. T.D. 8131, 52 FR 10052 (1987) and T.D. 8148, 52 FR 29375 (1987). Final regulations under section 263A are being published elsewhere in this issue of the **Federal Register**.

The final regulations adopt most of the rules provided in the temporary regulations. See the preamble to the final regulations for an explanation of the differences between the temporary and final regulations. The final regulations do not, however, adopt certain exceptions to the requirement contained in the temporary regulations that handling costs generally be capitalized, in particular, the exceptions relating to distribution costs, custom-order delivery costs, and repackaging costs. Rather, the final regulations reserve the provisions concerning these three exceptions. These proposed regulations provide rules concerning these three exceptions.

Explanation of Provisions

Handling Costs

The final regulations provide that handling costs include costs attributable to processing, assembling, repackaging, transporting, and other similar activities with respect to property acquired for resale, provided the activities do not come within the meaning of the term produce as defined in § 1.263A–2(a)(1) of the final regulations. As an initial matter, the final regulations provide a bright-line test for determining handling costs that are not required to be capitalized under section 263A. Under this test, handling costs incurred at a retail sales facility with respect to property sold from the facility are not required to be capitalized. Additionally, handling costs incurred at a dual-function storage facility with respect to property sold from the facility are not required to be capitalized to the extent that the costs are incurred with respect to property sold to retail customers in on-site sales. Handling costs attributable to property sold from a dual-function storage facility in on-site sales are determined by comparing the gross on-site sales of the facility to the total gross sales of the facility.

Distribution Costs

Under the temporary regulations, distribution costs are a type of handling costs that are not required to be capitalized (distribution costs exception). Distribution costs are defined in the temporary regulations as the cost of delivering goods directly to an unrelated customer. Commentators suggested that for purposes of the distribution costs exception, the final regulations should define distribution costs as all costs that are incurred after an order for specific goods has been placed. They commented, for example, that costs incurred to gather the goods to fill the order should be treated the same as distribution costs that are not required to be capitalized.

The Service believes that this suggestion is contrary to Congressional intent for two reasons. First, section 263A is designed to match expenses against related income (the matching principle). See S. Rep. No. 313, 99th Cong., 2d Sess. 140 (1986), 1986–3 C.B. (Vol. 3) 140. The Service believes that expansion of the distribution costs exception would be contrary to this principle because gross income is not typically recognized from a sale of an item when an order is placed, but rather when the item is shipped, delivered, or accepted, or when title to the item passes to the purchaser, whether or not billed.

Second, Congress specifically indicated that handling costs that are required to be capitalized generally must include all of the costs incurred prior to the loading of goods for final shipment to customers. The Conference Report to the 1986 Act describes costs allocable to inventory under the simplified resale method as including "handling, processing, assembly, repackaging, and similar costs, including labor costs attributable to unloading goods (but not including labor costs attributable to loading of goods for final shipment to customers, or labor at a retail facility)." 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–306 (1986), 1986–3 C.B. (Vol. 4) 306. The Blue Book to the 1986 Act also states that deductible "distribution expenses are intended to include only external distribution costs, that is, those costs incurred in transporting goods from the taxpayer's warehouse or retail outlet to the customer, or to the customer's agent, a common carrier, or some other intermediary. Distribution expenses do not include costs of moving inventory from a taxpayer's warehouse to its retail store or other internal transportation costs." Joint Committee on Taxation Staff, General Explanation of the Tax Reform Act of 1986, 99th Cong., JCS–10–87, 510 n.61. Accordingly, these proposed regulations do not expand the distribution costs exception.

In addition, some commentators suggested that the costs of delivering goods to a related customer be deductible just as the costs of delivering goods to an unrelated customer are deductible. Another commentator suggested that the cost of delivering goods to a related customer be deductible unless the related parties are members of a consolidated group. The Service believes that transportation costs between related parties are substantially equivalent to internal

transportation costs for purposes of section 263A. Therefore, these suggestions are contrary to the Congressional intent that the costs of moving inventory from a taxpayer's warehouse to its retail store or other internal transportation costs must be capitalized.

Cost of Delivering Custom-Ordered Items and Repackaging Costs

The temporary regulations also exclude from capitalization under section 263A the costs of delivering certain items from a storage facility to a location where the sale takes place, provided the items are specifically ordered by customers (custom-order exception), and the costs of repackaging goods in preparation for immediate delivery to particular customers if the repackaging occurs after the customer has ordered the goods (the repackaging costs exception).

Commentators suggested that the custom-order exception be expanded to include all costs necessary to gather and deliver custom-ordered items. Commentators also suggested that the repackaging costs exception be expanded to include all handling costs incurred after the customer orders the goods. The Service believes that these suggestions are contrary to Congressional intent as well. These suggestions are inconsistent with the matching principle that section 263A was designed to advance. In addition, these suggestions are contrary to Congressional intent that handling costs required to be capitalized generally must include all of the costs incurred prior to the loading of goods for final shipment to customers. Accordingly, the Service has elected not to expand the custom-order exception in these proposed regulations and is considering eliminating the exception altogether when these proposed regulations are finalized. Further, these proposed regulations eliminate the repackaging costs exception altogether.

Application of the Distribution Costs and Custom-Order Exceptions

These proposed regulations clarify the application of the distribution costs and custom-order exceptions. In the case of the distribution costs exception, the only costs not required to be capitalized as distribution costs are transportation costs incurred outside of a storage facility in delivering goods to an unrelated customer. In the case of the custom-order exception, the only costs not required to be capitalized are transportation costs incurred outside of a storage facility in delivering goods to a retail sales facility. For these purposes, these proposed regulations treat any costs incurred on a loading dock as incurred outside a storage facility. However, until these proposed regulations are finalized, the paragraphs in the temporary regulations providing the distribution costs exception and the custom-order exception continue to apply.

Transfers for Tax Avoidance Purposes

Section 263A(i) grants the Secretary the authority to prescribe regulations as may be necessary or appropriate to carry out the purposes of section 263A, including regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of the section. Under this grant of authority, the proposed regulations also would amend the final regulations to provide that the District Director may require appropriate adjustments to valuations of inventory and other property subject to section 263A if a transfer of property is made to another person for a principal purpose of tax avoidance. Thus, for example, the District Director may require a taxpayer using the simplified production method of § 1.263A– 2(b) to apply that method to transferred inventories immediately prior to a transfer under section 351 if a principal purpose of the transfer is tax avoidance.

Proposed Effective Date

These regulations are proposed to be effective for taxable years beginning after December 31, 1993.

Special Analysis

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

Written Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who timely submits written comments on the proposed rules. Notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Rosemary DeLeone and Harry-Todd Astrov of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury, however, assisted in developing these proposed regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.263A–1 is amended by adding the text of paragraph (j)(4) to read as follows:

§ 1.263A–1 Uniform capitalization of costs.

* * * * *

(j) * * *

(4) * * * The District Director may require appropriate adjustments to valuations of inventory and other property subject to section 263A if a transfer of property is made to another person for a principal purpose of tax avoidance. Thus, for example, the District Director may require a taxpayer using the simplified production method of § 1.263A–2(b) to apply that method to transferred inventories immediately prior to a transfer under section 351 if a principal purpose of the transfer is tax avoidance.

Par. 3. Section 1.263A–1T(a)(4) is amended by revising the fourth sentence of paragraph (a)(4) to read as follows:

§ 1.263A–1T Capitalization and inclusion of inventory costs of certain expenses (temporary).

(a) * * *

(4) * * Paragraphs (a), (b), and (d) are not effective for costs incurred after December 31, 1993, in taxable years beginning after that date. * * *

* * * * *

Par. 4. Section 1.263A–3(c)(4)(vi) is amended by:

1. Adding paragraphs (A)(*1*) and (*2*) and the text of paragraph (B) to read as set forth below.

2. Removing paragraph (C).

§ 1.263A–3 Rules relating to property acquired for resale.

* * * * *

(c) * * *

(4) * * *

(vi) * * * (A) * * * (*1*) In general. Distribution costs are any transportation costs incurred outside a storage facility in delivering goods to an unrelated customer. For this purpose, any costs incurred on a loading dock are treated as incurred outside a storage facility.

(*2*) Costs incurred transporting goods to a related person. Distribution costs do not include the costs of delivering goods by a taxpayer to a related person. Thus, for example, when the taxpayer sells goods to a related person, the costs of transporting such goods are included in determining the basis of the goods that are sold, and hence in determining the resulting gain or loss from such sale, for all purposes of the Internal Revenue Code and the regulations thereunder. See, e.g., sections 267, 707, and 1502. For purposes of this provision, persons are related if they are described in section 267(b) or section 707(b).

(B) * * * Generally, costs incurred in transporting goods from the taxpayer's storage facility to its retail sales facility are transportation costs that must be capitalized. However, the costs incurred outside a storage facility in delivering custom-ordered items to a retail sales facility are not required to be capitalized. For this purpose, any costs incurred on a loading dock are treated as incurred outside a storage facility. Delivery of custom-ordered items occurs when the taxpayer can demonstrate that a delivery to the taxpayer's retail sales facility is made to fill an identifiable order of a particular customer (placed by the customer before the delivery of the goods occurs) for the particular goods in question. Factors that may demonstrate the existence of a specific, identifiable delivery include the following—

(*1*) The customer has paid for the item in advance of the delivery;

(*2*) The customer has submitted a written order for the item;

(*3*) The item is not normally available at the retail sales facility for on-site customer purchases; and

(*4*) The item will be returned to the storage facility (and not held for sale at the retail sales facility) if the customer cancels an order.

* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 93–18131 Filed 8–6–93; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

[AMS–FRL–4690–2]

Clean Fuel Fleet Emission Standards, Conversions, and General Provisions and the California Pilot Test Program and Clean-Fuel Vehicle Standards for Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; extension of the comment period.

SUMMARY: This action extends the close of comment period to September 15, 1993 for portions of the Clean Fuel Fleet NPRM (58 FR 32474, June 10, 1993) and for the entire California Pilot Program NPRM (58 FR 34727, June 29, 1993). This action is in response to a request from manufacturers to extend the written comment periods on these two proposed rules until September 15, 1993. The comment period extension does not apply to the Definitions and General Provisions portion of the Clean Fuel Fleets NPRM. The comment period will still close on August 16, 1993 for that portion of the Clean Fuel Fleets NPRM.

DATES: Written comments on the definitions and general provisions sections of the Clean Fuel Fleet NPRM must be submitted on or before August 16, 1993. Written comments on the other sections of the Clean Fuel Fleet NPRM and the entire California Pilot Program NPRM must be submitted on or before September 15, 1993.

ADDRESSES: As indicated in the original notices, interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–92–30 for the Clean Fuel Fleet NPRM and to Public Docket No. A–92–69 for the California Pilot Program NPRM at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for public inspection from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Manning, U.S. EPA (SRPB–12), Regulation Development and Support Division, 2565 Plymouth Rd. Ann Arbor, MI 48105, Telephone: (313) 741–7832.

SUPPLEMENTARY INFORMATION: EPA has received a request from manufacturers to extend the written comment periods on these two proposed rules until September 15, 1993. The schedule for completing these rules is now the subject of a draft consent decree. The negotiated due date for the final rule on the Definitions and General Provisions portion of the Clean Fuel Fleet NPRM is December 1, 1993. The negotiated due dates for the final rules on the remaining portions of the Clean Fuel Fleet Program NPRM and the entire California Pilot Program NPRM are April 15, 1994 and April 30, 1994, respectively. EPA does not believe the flexibility exists to extend the comment period for the definitions portion of the Clean Fuel Fleet NPRM and to meet the final rule deadline. However, to provide more opportunity for comment while recognizing there are fixed deadlines for these rulemakings, we are extending the comment period deadline for the remaining portions of the Clean Fuel Fleet NPRM and for the entire California Pilot Program NPRM for 30 days, until September 15, 1993.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–18972 Filed 8–6–93; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Parts 122, 123, 131, and 132

[FRL–4689–7]

RIN 2040–AC08

Proposed Water Quality Guidance for the Great Lakes System

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule; availability of documents; correction.

SUMMARY: The purpose of this document is to announce the availability of two reports that EPA is considering as it develops the final Water Quality Guidance for the Great Lakes System; to request public comment on the possible application of the options set forth in these reports in the final Guidance; and to make corrections to the preamble and proposed rule text for the proposed Water Quality Guidance for the Great Lakes System, including missing text and changes that were inadvertently omitted during the editing of the

proposed rule. The proposed rule was published in the April 16, 1993, Federal Register (58 FR 20802), with corrections published at 58 FR 21046.

The two reports being made available for public comment are: "Revision of Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health: Report of Workshop and EPA's Preliminary Recommendations for Revision" ("Preliminary Recommendations"), and "Interim Report on Data and Methods for Assessment of 2,3,7,8-Tetrachlorodibenzo-p-dioxin Risks to Aquatic Life and Associated Wildlife" ("Interim Dioxin Report"). EPA wants to ensure that the public has an opportunity to comment on whether any of the options in the Preliminary Recommendations should be adopted in the final Great Lakes Water Quality Guidance methodologies for development of human health criteria and values, and for development of bioaccumulation factors. EPA also invites the public to comment on whether any of the data and methods in the Interim Dioxin Report should be adopted in the final Great Lakes Guidance.

DATES: Written comments should be submitted on or before September 13, 1993. Comments postmarked after this date may not be considered.

ADDRESSES: Send written comments to Wendy Schumacher, Water Quality Branch (WQS-16J), U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Illinois, 60604 (telephone: 312-886-0142). Commenters are requested to submit one original and 4 copies of their written comments. In addition, EPA encourages commenters to provide one copy of their comments in electronic format, preferably 5.25" or 3.5" diskettes compatible with WordPerfect for DOS. A copy of the reports identified in this document are available for inspection and copying at the U.S. EPA Region V Records Center, 77 W. Jackson Blvd., Chicago, Illinois, by appointment only. Appointments may be made by calling Wendy Schumacher (telephone: 312-886-0142). A reasonable fee will be charged for photocopies. The two reports are also available by mail upon request for a fee (see section I.C of Supplementary Information for more information).

FOR FURTHER INFORMATION CONTACT: Kenneth A. Fenner, Water Quality Branch Chief, (WQS-16J), U.S. EPA Region V, 77 W. Jackson Blvd., Chicago, Illinois, 60604 (telephone: 312-353-2079).

SUPPLEMENTARY INFORMATION:

I. Availability of Documents and Request for Comments

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation. Section 118(c)(2) of the Clean Water Act requires EPA to publish water quality guidance for the Great Lakes System which includes guidance on numerical limits on pollutants in ambient Great Lakes waters to protect human health, aquatic life and wildlife.

The proposed Water Quality Guidance for the Great Lakes System was published on April 16, 1993, in the Federal Register (58 FR 20802). Corrections to the proposed preamble and proposed rule text were published in the Federal Register on the same date (58 FR 21046). This Guidance, once finalized, will establish minimum water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System in the States of New York, Pennsylvania, Ohio, Indiana, Illinois, Minnesota, Wisconsin, and Michigan, including waters within the jurisdiction of Indian Tribes.

A. Great Lakes Guidance Human Health Methodology

In 1980, EPA published National guidelines for the development of protective criteria for contaminants that may adversely affect human health in ambient water. These guidelines can be found at 45 FR 79347, dated November 28, 1980. Using the 1980 National Guidelines, criteria may be developed based on toxicological endpoints (cancer and non-cancer adverse health effects), and organoleptic effects. The guidelines for derivation of criteria consider potential human exposure via consumption of water and ingestion of contaminated fish and shellfish.

The proposed Great Lakes Water Quality Guidance includes proposed numeric criteria to protect human health for 20 pollutants and methodologies to derive cancer and non-cancer human health criteria and values for additional pollutants. It also includes a methodology for development of bioaccumulation factors to be used in developing human health and wildlife criteria. Although the objectives of the proposed Great Lakes Human Health Guidance are similar to those of the 1980 National Guidelines, the proposed Great Lakes Human Health Methodology differs from current National Guidance in several respects. For example, the Great Lakes Guidance uses bioaccumulation factors which account for uptake of pollutants directly from the waters of the Great Lakes System plus uptake of pollutants from the food chain rather than bioconcentration factors (which only account for uptake of pollutants directly from the water). Additionally, a fish consumption rate that is based on data from the Great Lakes area is used in the proposed Guidance. For additional details on the proposed methodology, including similarities and differences with the 1980 National Guidelines, readers are referred to the preamble discussion contained in the April 16, 1993, notice (58 FR 20863-20877).

The April 16, 1993, proposed Guidance indicated that EPA is currently in the process of reviewing and revising its 1980 National Guidelines. EPA believes that the National Guidelines should be evaluated from time to time to determine whether significant advances have occurred in the science which should be reflected in the National methodology guidelines. As a first step in the revision effort, EPA prepared an issues paper and held a workshop on September 13-16, 1992, in Bethesda, Maryland to discuss the issues with a group of experts from EPA, other federal agencies, states, academia, industry, conservation groups and other interested parties. The workshop participants were divided into six working groups which discussed the following technical subjects: (1) cancer risk, (2) non-cancer risk, (3) exposure, (4) microbiology, (5) minimum data and (6) bioaccumulation. Each group provided a written summary of the information discussed by the group. The reports from the workshop and EPA's preliminary recommendations for revisions to the human health methodology were integrated into a report entitled, "Revision of Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health: Report of Workshop and EPA's Preliminary Recommendations for Revision" ("Preliminary Recommendations"), prepared by the Human Risk Assessment Branch, U.S. EPA Office of Water, January 8, 1993.

The Preliminary Recommendations report was submitted to EPA's Science Advisory Board (SAB) for review and comment during the SAB's February 9-10, 1993, meeting. The SAB meetings are open to the public and the public may submit comments on the issues discussed at these meetings directly to

the SAB. EPA anticipates that the SAB will provide formal written comments on the Preliminary Recommendations in an SAB report expected this year. EPA will make the SAB report available to the public at that time. EPA will consider all public comments submitted to the SAB in response to the February 9–10, 1993, SAB review meeting and any public comments on the final SAB report, when it becomes available, in the preparation of the final Great Lakes Guidance. EPA encourages the public to also send one original and 4 copies of their written comments to the SAB directly to Ms. Wendy Schumacher at the address specified at the beginning of today's notice.

EPA is providing this notice of availability, and placing the Preliminary Recommendations in the administrative record for the proposed Great Lakes Water Quality Guidance, because EPA intends to consider all the recommendations concerning issues associated with the National guidelines revision, and discussed in the subject report, in the development of final Water Quality Guidance for human health protection in the Great Lakes System. EPA will also consider the SAB comments on the Preliminary Recommendations in finalizing the Great Lakes Guidance, and intends to issue a subsequent notice of availability when the SAB report is issued. The following are some examples of alternatives discussed in the January 8, 1993, Preliminary Recommendations to the SAB but not included in the April 16, 1993, proposal.

1. Minimum Data

The proposed Great Lakes Guidance would include two tiers of criteria/values for the protection of human health which differ in minimum data requirements. For example, to develop a noncancer Tier I criterion, the minimum requirement is a no-observed-adverse-effect-level (NOAEL) from a well conducted subchronic mammalian study. The duration of the study must be at least 90 days in rodents, or 10 percent of the lifespan of other appropriate species. For a noncancer Tier II value, the minimum acceptable database is a NOAEL from a well conducted repeated dose mammalian study of at least 28 days. For both Tier I criteria and Tier II values all relevant data must be considered. The terms "criteria" and "values" are used to differentiate between protective ambient concentrations derived with optimum, as opposed to acceptable, data requirements. Both Tier I criteria and Tier II values will have regulatory effect under the proposed Great Lakes Guidance. [See 58 FR 20871–74.]

One option discussed in the January 8, 1993, Preliminary Recommendations involves a five-tier approach based on the quality and type of toxicological information. These tiers range from high confidence data (Tier I) to no available data (Tier V). Data requirements for Tier I chemicals include mechanistic, pharmacokinetic, and target organ toxicity data. Tier II includes those chemicals with enough data to establish a reference dose (RfD) for noncancer endpoints or a cancer potency factor. Readers are referred to the April 16, 1993 notice (58 FR 20872–73) for information on the minimum acceptable data base for an RfD or a cancer potency factor. Tier III includes: (1) Chemicals for which available data are not sufficient to meet the requirements for RfD development but consist of at least a well conducted 28-day repeated oral dose rodent bioassay resulting in a NOAEL, (2) chemicals which are Group C chemicals (see U.S. EPA's Guidelines for Carcinogenic Risk Assessment, published on September 24, 1986 at 51 FR 33992) and for which insufficient data to calculate a cancer potency slope exists, and (3) chemicals which are Group C chemicals of low concern (e.g., chemicals of low potency or in which the mechanism of carcinogenicity does not appear directly related to humans due to species differences in toxicokinetics). Tier IV chemicals include those not meeting the 28-day minimum data requirement for Tier III, but available noncancer and cancer data (such as acute toxicity data, genetic toxicology, structure activity relationship data) indicates a potential health hazard. Tier IV data are insufficient to develop a numeric criterion but may be used in interpreting narrative criteria. Tier V indicates no data availability. Under this alternative five-tier approach, Tiers I and II are equivalent to Tier I criteria in the proposed Great Lakes Guidance while Tier III is equivalent to Tier II values in the Guidance. This alternative scheme is a refinement of the proposed Great Lakes Guidance 2-tier approach. The extra tiers are added to better describe and categorize the quality of the data. EPA requests comment on the use of this alternative classification scheme of five tiers for the Great Lakes Guidance and, specifically, on how these different tiers could be used in regulatory decision-making (e.g., in setting permit limits). For example, in those instances where insufficient data exist to develop numeric criteria or values, available information could nevertheless be used to interpret State narrative criteria.

2. Relative Source Contribution

Under the proposed Great Lakes Guidance, EPA assumes an 80 percent relative source contribution (RSC) from surface water pathways (water and fish) for bioaccumulative contaminants of concern (BCCs), and 100 percent RSC for non-BCCs, in deriving noncancer criteria/values. A 100 percent RSC is assumed for all chemicals in deriving cancer criteria/values. (See 58 FR 20870.)

Several alternative options are described in the Preliminary Recommendations. One option is to use a subtraction approach to account for other sources of exposure (e.g., air, food) when there are sufficient data to quantitatively apportion them rather than using arbitrary default values. (In the case of no available data, a default assumption will still have to be made.) The contribution from these other sources could be subtracted from the Reference Dose (RfD) in deriving the criteria. One of the options includes the use of a 20 percent floor and an 80 percent ceiling for the RSC when adequate exposure data are available, and a 20 percent default value when adequate exposure data are lacking. There is no differentiation for bioaccumulative and non-bioaccumulative chemicals under any of the options in the report. EPA requests specific comments on the possibility of incorporating one of the RSC options described in the January 8, 1993, Preliminary Recommendations in the final Great Lakes Guidance.

3. Development of Short-Term Advisory Levels

Under the Great Lakes Guidance, all criteria and values are developed based on an assumption of long-term exposures to humans. A 70-year exposure is assumed, and fish and water consumption rates reflect long-term exposures. An alternative is discussed in the report to the SAB. The workshop report and EPA's preliminary recommendations include the concept of developing one-day Health Advisory Doses (HADs) which could be used to develop criteria to protect the public (including sensitive subpopulations such as pregnant women) from large short-term doses of contaminants from consumption of fish containing pollutant residues. This concept was developed with the belief that people may consume large amounts of fish during a given meal and that reproduction/developmental effects (or other short-term acute effects) may not

adequately be accounted for with a lifetime criterion using a long-term exposure assumptions. Criteria based on short-term exposures would supplement criteria based on long-term exposures. EPA requests specific comment on this issue with regard to the need for development of human health criteria based on short-term exposures.

B. Interim Dioxin Report

EPA released a peer-reviewed interim report on dioxin ecological effects on April 23, 1993. This report is entitled, "Interim Report on Data and Methods for the Assessment of 2,3,7,8-Tetrachlorodibenzo-p-dioxin Risks to Aquatic Organisms and Associated Wildlife", prepared by the Office of Research and Development, U.S. EPA, March 1993 (EPA Report Number: EPA/600/R-93/055). The report compiles and evaluates toxicity, exposure and bioaccumulation data from the current scientific literature for aquatic life and associated wildlife regarding dioxin. The report addresses issues related to risk characterization to illustrate the use of current information in ecological risk assessments.

EPA is placing this document in the administrative record for the Great Lakes Guidance because the proposed Great Lakes Guidance includes both human health and wildlife criteria for dioxin. The Interim Dioxin Report contains relevant information for the derivation of a wildlife criterion for dioxin. In addition, the Interim Dioxin Report summarizes available effects and exposure data for assessment of dioxin risks to aquatic life and provides information on how to derive dioxin bioaccumulation factors (BAFs). BAFs are used in deriving both human health and wildlife criteria. Under the BAF methodology in the Interim Report, the dioxin BAF varies with the particulate organic carbon (POC) content of the ambient water. The Interim Report shows BAFs and environmental concentrations associated with risks to aquatic life and wildlife based on Lake Ontario data (POC of 0.2 mg/L). Available information suggests that POC levels vary considerably among the waters of the Great Lakes system. For example, POC levels range from less than 0.05 mg/L in Lake Superior to levels from 2 mg/L to 20 mg/L (during heavy rain periods) in the Fox River, a tributary of Lake Michigan. As the POC level increases, the effect concentration increases due to greater binding by organic matter.

EPA did not propose an aquatic life-based criterion for dioxin in the April 16, 1993, proposed Great Lakes Guidance because research efforts in this area are still on-going and the available data are not sufficient to derive a Tier I aquatic life criterion. The Interim Dioxin Report has data that may be used to calculate a Tier II aquatic life value for dioxin.

EPA requests specific public comments on: (1) The applicability of the information contained in the Interim Dioxin Report to a wildlife criterion for dioxin in the Great Lakes System, (2) whether the information provided on aquatic life effects in the Interim Dioxin Report should be used in the final Great Lakes Guidance to calculate an interim numerical limit for dioxin to protect aquatic life (i.e., a Tier II value), and (3) whether the methodology in the report should be used to develop BAFs that vary in the Great Lakes basin with POC levels in the ambient water or whether a single BAF should be used for consistency among the Great Lakes States.

C. Document Availability

The two reports that are referenced in this document are available for inspection and photocopying in the administrative record for this rulemaking at the address listed at the beginning of this preamble. A reasonable fee will be charged for photocopies.

The report, "Revision of Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health: Report of Workshop and EPA's Preliminary Recommendations for Revision" is available for a fee upon written request or telephone call to the National Technical Information Center (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The toll free number is 800-553-6847 and the local number is 703-487-4650. Alternatively, copies may be obtained for a fee upon written request or telephone call to the Educational Resources Information Center/Clearinghouse for Science, Mathematics, and Environmental Education (ERIC/CSMEE), 1200 Chambers Road, room 310, Columbus, Ohio 43212 (phone number: 614-292- 6717). When ordering, please include the NTIS accession number, PB 93-213494, price code A06, or the ERIC/CSMEE accession number, 687-D, $12.25.

The report, "Interim Report on Data and Methods for Assessment of 2,3,7,8-Tetrachlorodibenzo-p-dioxin Risks to Aquatic Life and Associated Wildlife," is available upon written request or telephone call to the Center for Environmental Research Information, EPA Office of Research and Development, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268 (phone number: 513-569-7562).

II. Corrections

This notice provides corrections to several paragraphs in the preamble and the proposed rule text for the proposed Water Quality Guidance for the Great Lakes System which appeared on the April 16, 1993, **Federal Register** (58 FR 20802). The corrections provide missing text and changes that were inadvertently omitted during editing of the proposed rule and are in addition to corrections 1 through 7 published with the proposed rule in a separate section of the April 16, 1993, **Federal Register** (58 FR 21046).

Correction 8

The last sentence of the second paragraph of the DATES section of the notice should read, "The hearing officer reserves the right to limit oral testimony to 10 minutes or less, if necessary." (58 FR 20802) The words "or less" were omitted through editing error.

Correction 9

Two addresses in the ADDRESSES section contained typographical errors. Under Minnesota, the address should read, "Minnesota Pollution Control Agency, Library, 520 Lafayette, St. Paul, Minnesota (612-296-7719)." Under New York, the entry for NYSDEC, Region 8, should read, "NYSDEC, Region 8, 6274 East Avon-Lima Road, Avon, New York, 14414 (716-226-2466)." (58 FR 20802)

Correction 10

The third sentence of the second paragraph of section I.A.4.a of the preamble should read, "An effluent limit of one mg/L of phosphorus was imposed on all major (greater than 1 million gallons per day) municipal sewage treatment facilities in the Great Lakes basin." (58 FR 20807) The revision corrects an error in the units of the effluent limit.

Correction 11

The references in sections I.A.4.b (58 FR 20809) and I.H (58 FR 20832) to a study by Ballschmitter et al., 1989, are deleted.

Correction 12

The following reference should be added to the list in section I.H of the preamble (58 FR 20832):

Eisenreich, S.J. and W.M.J. Strachan. 1992. Estimating atmospheric deposition of toxic substances to the Great Lakes: an update, from workshop, Canada Center for Inland Waters, Burlington, Ontario, January

31–February 2, 1992, sponsored by Great Lakes Protection Fund and Environment Canada. June 1992.

Correction 13

The last sentence of section II.C of the preamble should read as follows: "For example, the EPA guidance document 'Technical Support Document for Water Quality-based Toxics Control' (March 1991) remains fully applicable as guidance within the Great Lakes System for topics that have not been addressed by the proposed Guidance, and fully applicable as guidance for all topics for waters outside the Great Lakes System." (58 FR 20835) The second word "guidance" replaces the word "evidence," which was a typographical error.

Correction 14

The second sentence of the second paragraph of section II.D.3 of the preamble should read, "The approach may therefore result in permit limits which may later be found to be more stringent than those derived from new toxicity data." (58 FR 20837). The words "more stringent" replace the word "nonresistant," which was a typographical error.

Correction 15

The ninth paragraph of section II.G of the preamble should read as follows: "The third way that Table 6 affects the initial focus of this Guidance is in determining when States, Tribes, and/or permittees must generate data necessary to calculate Tier II values used in developing water quality-based effluent limits. Procedure 5.D of the proposed Implementation Procedures in appendix F requires that permitting authorities generate, or have permittees generate, the data necessary to calculate Tier II values for pollutants in Table 6 for which there is no Tier I criterion or Tier II value if the permitting authority determines based on a specified screening approach that a discharge causes, has the reasonable potential to cause or contributes to an excursion above a State water quality standard." (58 FR 20844) The word "permittee" replaces the word "permitter," which was a typographical error, in two places.

Correction 16

The first sentence of the second to the last paragraph of section II.G of the preamble should read, "EPA invites comment on the proposed BAF level of 1000 and any alternative BAF levels for use in defining BCCs." (58 FR 20845). The word "defining" replaces the word "defending," which was a typographical error.

Correction 17

The fifth paragraph of section II.H of the preamble should read as follows: "If a Great Lakes State or Tribe fails to submit criteria, methodologies, policies, and procedures to EPA for review, proposed § 132.5(c) provides that the requirements of this part will apply to discharges within the State or Federal Indian Reservation upon EPA's publication of a final rule in the **Federal Register** indicating the effective date of the part 132 requirements in the identified jurisdictions. EPA does not intend to provide at that time an opportunity for another round of public comment on the criteria, methodologies, policies, and procedures presented in the proposed Guidance. EPA believes that under these circumstances, today's public comment period will provide adequate notice and opportunity for comment on all issues related to the criteria, methodologies, policies, and procedures. Accordingly, EPA will issue a final rule identifying the criteria, methodologies, policies, and procedures that apply in the appropriate jurisdictions." (58 FR 20846) The words "a final rule" replace "the final Guidance," to correct an editing error, in two places.

Correction 18

The first sentence of the twelfth paragraph of section II.H of the preamble should read as follows: "Proposed § 132.5 of the proposed Guidance would provide that requirements of this part will become effective within a State or Federal Indian Reservation if the State or Tribe fails to make the necessary submission, or if one or more parts of the submission cannot be approved by EPA and the State or Tribe fails to correct the deficiency upon notice by EPA, following EPA's publication of a final rule in the **Federal Register** identifying the elements of the part 132 requirements that apply in the jurisdiction and their effective date in the jurisdiction." (58 FR 20846) As in correction 17, the words "a final rule" replace "the final Guidance," to correct an editing error.

Correction 19

The ambient water quality criteria for aquatic life for pentachlorophenol and phenol should be corrected in Tables III–1 and III–2 of the preamble (58 FR 20853) and Tables 1 and 2 of proposed part 132 (58 FR 21014). The correct values were used, however, in the support document, "Great Lakes Water Quality Initiative Criteria Documents for the Protection of Aquatic Life in Ambient Water." The corrected values are: for Pentachlorophenol, chronic criterion (CCC), 4.1 μg/L; for Phenol, acute criterion (CMC), 3600 μg/L; for Phenol, chronic criterion (CCC), 110 μg/L.

Correction 20

The headings "Percentile" and "Sample Size" for Table III–3 of the preamble were transposed by typographical error. (58 FR 20856) "Percentile" should appear over the left column, and "Sample Size" should appear over the 7 sub-columns on the right.

Correction 21

In Table IX–1 of the preamble, the entries for Major direct dischargers—Municipal should read 348.9 and 353.5 for Scenarios 3 and 4 respectively. (58 FR 20987) The initial "3"s were omitted through typographical error. The totals for Scenarios 3 and 4 were also in error for the same reason. They should read 473.9 and 505.5 for Scenarios 3 and 4 respectively. Please note that these errors occur only in the table. EPA used the correct figures in its analysis of the costs of implementing the Guidance, and in the preamble text discussing the analysis. The figures are also stated correctly in the support document, "Assessment of Compliance Costs Resulting from Implementation of the Proposed Great Lakes Water Quality Guidance."

Correction 22

The telephone number for the National Technical Information Service in the second paragraph of section XIII of the preamble should be 800–553–6847. (58 FR 21002)

Dated: July 30, 1993.

Martha G. Prothro,

Acting Assistant Administrator.

[FR Doc. 93–18974 Filed 8–6–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

45 CFR Part 57a

RIN 0905–AC95

Special Volunteer Services at the National Institutes of Health

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to issue new

regulations concerning the acceptance and use of uncompensated volunteer services. Existing Department of Health and Human Services regulations governing volunteer services apply exclusively to the acceptance of voluntary and uncompensated services for use in the operation of any health care facility of the Department or in the provision of health care. The new regulations would provide coverage for the acceptance and use of other diverse voluntary and uncompensated services by NIH which are not covered by the existing regulations.

DATES: Comments must be received by October 8, 1993.

ADDRESSES: Comments should be sent to Mr. John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Migliore, National Institutes of Health, Building 31, room 3B11, 9000 Rockville Pike, Bethesda, Maryland, 20892, telephone (301) 496–2832.

SUPPLEMENTARY INFORMATION: Sections 402 and 405 of the Public Health Service Act (PHS Act), as amended (42 U.S.C. 282, 284), authorize the Secretary, acting respectively through the Director of the National Institutes of Health (NIH) and the Directors of the national research institutes of NIH, to accept voluntary services, without compensation, in carrying out the functions of NIH. Other NIH components, including the National Library of Medicine, National Center for Research Resources, National Center for Human Genome Research, John E. Fogarty International Center for Advanced Study in the Health Sciences, National Center for Nursing Research, Warren Grant Magnuson Clinical Center, Division of Computer Research and Technology, and Division of Research Grants, have been delegated this authority by the Director, NIH. Additionally, section 464P of the PHS Act, as added by section 123 of the ADAMHA Reorganization Act (Pub. L. 102–321) (42 U.S.C. 285o–4), authorizes the Director of the National Institute on Drug Abuse (NIDA) to accept voluntary and uncompensated services in carrying out the Institute's Medication Development Program.

Existing regulations in 45 CFR part 57 concerning volunteer services apply exclusively to the acceptance of voluntary and uncompensated services for "use in the operation of any health care facility of the Department or in the provision of health care." The proposed regulations in part 57a would apply to the acceptance and use of other diverse voluntary and uncompensated services authorized by sections 402, 405, and 464P of the PHS Act, which are not covered by part 57. These volunteer services include, but are not limited to, services accepted in support of a wide variety of NIH activities such as research, patient care, clerical assignments, technical assistance, and other general activities necessary in carrying out the authorized functions of NIH. These services are termed "special volunteer services" and are administered through the NIH Special Volunteer Program.

The purpose of this notice is to invite public comment on the proposed rule that would implement the statutory authority of NIH to accept these special volunteer services in support of its authorized functions.

The following statements are provided for the information of the public:

1. Regulatory Impact Statement

The proposed regulations have been reviewed in accordance with the requirements of Executive Order No. 12291. The Secretary has determined that they do not constitute a major rule as specified in the Order and that a Regulatory Impact Analysis is not required.

2. Regulatory Flexibility Analysis

The proposed regulations have been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). The Secretary has determined that compliance with the regulations would not have a significant economic impact on a substantial number of small entities and therefore a Regulatory Flexibility Analysis is not required.

3. Paperwork Reduction Act

Section 57a.4 of this proposed rule contains information collection requirements subject to Office of Management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The form (Form NIH–590) used for the information collection specified in § 57a.4(c) regarding special volunteer assignment and the associated burden were previously approved by OMB under OMB Approval Number 0925–0177 (expires January 31, 1994). The title, description, and respondent description of the information collection requirements specified in this proposed rule are presented below with an estimate of the annual burden. Organizations and individuals interested in commenting on the information collection requirements are invited to send their comments to: Dr. Charles MacKay, Project Clearance Office, National Institutes of Health, Building 1, room 328, 9000 Rockville Pike, Bethesda, Maryland 20892; and/or OMB Desk Officer, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, 725 17th St., NW., Washington, DC 20503.

Title: National Institutes of Health Special Volunteer Program.

Description: The information collection will be used by NIH to determine an individual's qualifications and eligibility for assignments under the NIH Special Volunteer Program.

Respondent Description: Individuals or households.

Estimated Annual Reporting and Recordkeeping Burden:

	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting: § 57a.4(c)	850	1	.08	(68)
Total Burden				0

[1] This burden is approved under OMB Approval Number 0925–0177 (expires, January 31, 1994).

List of Subjects in 45 CFR Part 57a

Special volunteers, Volunteers.

Accordingly, it is proposed to amend title 45, subtitle A of the Code of Federal Regulations, by adding a new part 57a as set forth below.

Dated: March 2, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

Approved: May 18, 1993.

Donna E. Shalala,

Secretary.

PART 57a—SPECIAL VOLUNTEER SERVICES AT THE NATIONAL INSTITUTES OF HEALTH

Sec.
57a.1 Applicability.
57a.2 Definitions.
57a.3 Acceptance of special volunteer services.
57a.4 Compensation, authorization, and termination of special volunteer services.
57a.5 Services and benefits available to special volunteers.
57a.6 Other policies and procedures that apply.

Authority: 42 U.S.C. 216, 282(b)(10), 284(b)(1)(K), 285o–4(b)(4).

§ 57a.1 Applicability.

The regulations in this part implement sections 402 and 405 of the Public Health Service Act, as amended (42 U.S.C. 282, 284), which authorize the Secretary, acting through the Director of the National Institutes of Health (NIH) and the Director of each national research institute, to accept and use voluntary services of individuals and groups of individuals in carrying out the functions of NIH, without compensation from NIH; and section 464P of the PHS Act, as amended (42 U.S.C. 285o–4), which authorizes the Director of the National Institute on Drug Abuse to accept and use voluntary services of individuals and groups of individuals in carrying out the Medication Development Program, without compensation from NIH. They are in addition to the regulations in part 57 of this subtitle in which the authority to accept volunteer services is limited exclusively to activities supporting the operation of a health care facility or provision of health care. The authority described in this part applies to all NIH components and permits acceptance and use of volunteer services in support of a large variety of NIH activities.

§ 57a.2 Definitions.

As used in this part:

Secretary means the Secretary of Health and Human Services.

Director means the Director of NIH, or with respect to the acceptance of voluntary and uncompensated services under section 464P of the Public Health Service Act, the Director of the National Institute on Drug Abuse, and any other officer or employee of NIH to whom authority has been delegated.

NIH means the National Institutes of Health, an agency of the Public Health Service within the Department of Health and Human Services.

National research institute means each organizational entity of NIH so designated in or pursuant to section 401 of the Public Health Service Act, as amended (42 U.S.C. 281).

Special volunteer services mean services performed by individuals or groups of individuals whose offer of services to NIH has been accepted under a formal agreement to provide services to NIH in research, direct patient care, clerical assignments, technical assistance, or any other activities necessary to carry out authorized functions of NIH, without compensation from NIH.

Special volunteer means an individual who provides special volunteer services.

§ 57a.3 Acceptance of special volunteer services.

(a) Volunteer services may be accepted from individuals or groups who:

(1) Are donating their services as members of volunteer or charitable organizations;

(2) Offer their services to be performed on their own time, and not associated with any employment they may have;

(3) Are receiving fellowship or stipend support from academic institutions, or other outside organizations with which the individuals have nonemployment relationships;

(4) Are employees of outside organizations on sabbaticals or leaves of absence;

(5) Are employees of outside nonprofit organizations which administer donor funds, but which require no services from these individuals; or

(6) Offer their volunteer services under other circumstances determined by the Director to be appropriate.

(b) Special volunteers are not subject to the investigative requirements of Executive Order No. 10450, "Security Requirements for Government Employment." However, a special volunteer is subject to such tests of character, reputation, and fitness as the Director may prescribe to ensure that the volunteer is suitable to provide the special volunteer services for which he/she is being considered.

(c) Special volunteers are not required to be U.S. citizens. However, noncitizens performing volunteer services at NIH must have appropriate visas that permit their activities at NIH.

(d) Special volunteers are not eligible for health insurance coverage under the Federal Health Benefits Program. The Director may require that a volunteer have adequate health care benefits coverage, based upon a determination that the volunteer assignment involves a significant risk of injury or exposure to conditions that could cause disease or impairment of health.

(e) Special volunteers who will engage in direct patient care activities must have appropriate professional credentials, and must obtain appropriate clinical privileges in accordance with procedures prescribed by the Director.

(f) Special volunteers who are working in health care activities may, as prescribed by the Director, be subject to medical preventive measures designed to minimize exposure of patients and workers to contagious diseases.

§ 57a.4 Compensation, authorization, and termination of special volunteer services.

(a) Individuals and groups of individuals who provide volunteer services to NIH under the regulations of this part may not be compensated by NIH for their services.

(b) Proposed special volunteer assignments must be reviewed by appropriate NIH approving officials to ensure that acceptance of the services will not present actual or potential conflicts of interest.

(c) Authorization of special volunteer assignments requires volunteers to provide general information about themselves and the nature of the services offered which is used for the purpose of determining the qualifications and eligibility of the volunteer to participate in the Special Volunteer Program and the appropriateness of the proposed volunteer assignment. Additionally, approval of parents or guardians is required for all volunteers who are minors.

(d) Except as may be otherwise determined by the Director, taking into account NIH needs for the services offered by the volunteer, special volunteer assignments will be authorized for a period of one year, renewable in one-year increments upon mutual written agreement of the volunteer and NIH.

(e) Notwithstanding the policies of individual NIH organizations on the length of volunteer assignments, special volunteer service arrangements may be terminated at any time by either party to the agreement.

§ 57a.5 Services and benefits available to special volunteers.

(a) The following provisions of law are applicable to special volunteers

whose services are offered and accepted under the regulations of this part insofar as the volunteers are acting within the scope of work assigned to them:

(1) 5 U.S.C. chapter 81, subchapter I, relating to medical services for work related injuries;

(2) 28 U.S.C. chapter 171, relating to tort claims;

(3) 5 U.S.C. section 7903, relating to protective clothing and equipment; and

(4) 5 U.S.C. section 5703, relating to travel and transportation expenses.

(b) Special volunteers also may be provided such other benefits as are authorized by law or administrative action by the Director, NIH, the Director of each national research institute, or other officials of NIH components with appropriate delegated authority.

(c) NIH may reimburse volunteers for travel expenses for interviews and to the duty station in accordance with the Office of Personnel Management regulations (5 CFR part 572).

§ 57a.6 Other policies and procedures that apply.

(a) While on the premises of NIH, and while performing volunteer services off the premises of NIH, special volunteers are required to conform to all applicable administrative instructions and requirements of the Department of Health and Human Services and NIH including, but not limited to, all regulations and procedures concerning conduct, safety, patient care, and animal care.

(b) Special volunteers must be under the direct supervision and guidance of NIH employees. Persons volunteering patient care services in the Warren Grant Magnuson Clinical Center must be under the direct supervision and guidance of appropriate NIH employees authorized to provide patient care.

(c) Special volunteers may not supervise or direct the activities of NIH employees. Volunteers may, acting under the direction of NIH employees, coordinate the activities of other volunteers.

(d) Special volunteers may not make policy, contractual, or legal commitments on behalf of NIH.

(e) Additional policies and procedures consistent with this part may be established by the Director, NIH, the Director of each national research institute, or other officials of NIH organizations to whom appropriate authority has been delegated. These policies and procedures may include, but are not limited to, additional requirements for accepting volunteer services from individuals or groups of individuals, using volunteer services, giving appropriate recognition to volunteers, and maintaining records regarding volunteer services.

[FR Doc. 93–18687 Filed 8–6–93; 8:45 am]
BILLING CODE 4140–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 93–02]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Federal Maritime Commission ("Commission") is discontinuing this rulemaking proceeding. The Proposed Rule would have required complaints alleging violations of section 10(a)(1) of the Shipping Act of 1984 ("1984 Act") to state with particularity the circumstances constituting such violations, failing which the complaint could be dismissed. The Commission has concluded, on the basis of the record, that the Proposed Rule is not necessary to facilitate the efficient disposition of carriers' unpaid freight complaints.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 N. Capitol St., NW., Washington, DC 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding by publishing in the **Federal Register**, 58 FR 7199, Feb. 5, 1993, a proposed rule ("Proposed Rule") to effect a variety of amendments to its Rules of Practice and Procedure ("Rules").[1] The Commission proposed, inter alia, to amend 46 CFR 502.62 of the Rules ("Rule 62") to require that in all complaints alleging violations of section 10(a)(1) of the 1984 Act, 46 U.S.C. app. 1709(a)(1), the circumstances constituting such violations must be stated with particularity.[2] A complaint alleging merely that a respondent failed to pay ocean freight bills, without specifying the conduct alleged to violate section 10(a)(1), would be deemed not to have complied with the rule. The Proposed Rule directed that if a complaint failed to specify such circumstances as required by the rule, an administrative law judge ("ALJ") could dismiss the complaint at any time, regardless of whether an answer had been filed.

The Proposed Rule noted that in recent years the Commission has seen a marked increase in the number of complaints alleging violations of section 10(a)(1) of the 1984 Act. In the large majority of these cases the complaints did not specify an "unjust or unfair device or means," as required by the statute. Instead, the complaints merely asserted that respondent shippers failed to pay ocean freight on the shipments involved. Often, the Proposed Rule explained, shippers failed to answer the complaints or respond to orders and notices, and default judgments were issued against them.[3]

In addressing these unpaid freight cases, the Commission has encountered concerns regarding the extent of its jurisdiction over "simple failure to pay" cases, which traditionally have been heard in state law courts.[4] In order to clarify these jurisdictional questions and to provide guidance to complainants, the Commission, in Docket No. 92–46, issued an interpretive rule, 46 CFR 571.2 ("Interpretive Rule"). That rule instructs, in part:

> An essential element of the (section 10(a)(1)) offense is use of an "unjust or unfair device or means." In the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an "unjust or unfair device or means" from the failure of a shipper to pay ocean freight. an "unjust or unfair device or means" could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges.

In issuing the Interpretive Rule, the Commission explained that the legislative history of section 10(a)(1) (and its predecessor, section 16, initial paragraph, of the Shipping Act, 1916, 46 U.S.C. ap. 815) indicates that the section was intended to address cases involving actual fraud of deception, and not simple freight collection disputes.

The Proposed Rule suggested, however, that under the current Rules the Commission often cannot determine from the face of a complaint whether the

[1] The majority of the changes advanced in the Proposed Rule generated no objections, and were adopted by the Commission in a final rule published in the **Federal Register**, 58 FR 27208, May 7, 1993.

[2] Section 10(a)(1) directs that no person may "knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation by water for property at less than the rates or charges which would otherwise be applicable."

[3] See, *e.g.*, *Deppe Line GmbH & Co.* v. *Total Tank Distribution Inc.*, 25 S.R.R.832 (1990); Safbank Line Limited v. *Royale International Transport, Inc.*, 25 S.R.R. 951 (1990).

[4] See, *e.g.*, *China Ocean Shipping Co.* v. *DMV Ridgeview, Inc. motion to dismiss granted*, 26 S.R.R. 50 (1991), *reconsideration denied on other grounds*, 26 S.R.R. 200 (1992).

claim properly involves section 10(a)(1), and is thus within the Commission's jurisdiction, or if instead it is a simple freight collection dispute. It was also observed that the typical complaint in such cases may fail to give respondents adequate notice of the true nature of an alleged section 10(a)(1) violation. Therefore, it was proposed that Rule 62 be amended as follows:

(b) In all averments of violations of section 10(a)(1), the circumstances constituting such violations shall be stated with particularity. In the event that the complaint fails to specify the circumstances, as required by this rule, the presiding officer may dismiss the complaint at any time whether or not an answer has been filed. A complaint which merely alleges that respondent has failed to pay ocean freight bills without alleging conduct that violates section 10(a)(1) will be deemed not to have complied with this rule. For a discussion of an essential element of this offense and the evidence necessary to satisfy it, reference should be had to the Federal Maritime Commission Interpretation set forth at § 571.2 of this chapter.

Three comments have been filed in response to the Proposed Rule. Comments supporting the proposed amendment, although urging some clarifications, were submitted by the National Industrial Transportation League ("NIT League"). Comments in opposition have been filed by the Transpacific Westbound Rate Agreement ("TWRA"), and on behalf of seventeen conferences or agreements ("Conferences").[5]

Discussion

The comments in opposition set forth several arguments against the proposed amendment. Some of these critiques, such as the suggestion that the procedure set forth in the Proposed Rule would violate due process rights, are not persuasive. Other objections have already been considered and rejected by the Commission in the promulgation of the Interpretive Rule. For example, both TWRA and the Conferences object to the distinction in the Proposed Rule between a simple failure to pay freight due and the use of an unjust or unfair device or means to avoid paying freight due. The Conferences argue that such a distinction makes the collection of filed rates more difficult, and thus is contrary to the Congressional intent underlying the 1984 Act. However, this argument was considered and found not persuasive by the Commission when it issued the Interpretive Rule. As noted by the Commission at that time, the language of the statute and its legislative history clearly indicate that Congress did not intend section 10(a)(1) to afford a cause of action against all shippers who fail to pay freight; instead, the section applies only to those who pay less than the filed rate through use of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means.

Similarly without merit are the Conferences' policy arguments that it is "illogical" for shippers who refuse to pay freight charges to be treated differently from those shippers who employ a scheme for misdeclaration or misdescription of cargo to reduce freight charges. When this objection was raised with regard to the Interpretive Rule, the Commission responded:

(S)ound policy reasons may exist as to why carrier complaints seeking to collect unpaid freight from a shipper should be brought under the Commission's jurisdiction * * *. However, the Commission may not itself act upon those policy reasons in the first instance; that power is reserved to Congress. At present, it continues to appear that section 10(a)(1) does not encompass ordinary freight collection complaints.

Unpaid Freight Charges—Final Interpretive Rule, 58 FR 7190, 7193, Feb. 5, 1993 (quoting Notice of Proposed Rulemaking).

More compelling, however, is the Conferences' observation that current Commission rules already require careful pleading and provide presiding officers with a variety of options for the disposition of inadequately drafted complaints. Commission regulations mandate that complaints "fully describe the alleged violation of the specific section(s) of the shipping statute(s) involved and how complainant is or was directly injured as a result." 46 CFR part 502, Exhibit No. 1 to subpart E (§ 502.62)—Complaint From and Information Checklist. If the complaint lacks sufficient facts, the ALJ can require that it be amended, pursuant to Rule 62(c), which directs:

If the complaint fails to indicate the sections of the acts alleged to have been violated or clearly to state facts which support the allegations, the Commission may, on its own initiative, require the complaint to be amended to supply such further particulars as it deems necessary.

The ALJ enjoys broad discretion even when the respondent fails to respond to the complaint. Rule 64(b), 46 CFR 502.64(b), provides:

In the event that respondent should fail to file and serve the answer within the time provided, the presiding officer may enter such rule or order as may be just, or may in any case require such proof as he or she may deem proper, except that the presiding officer may permit the filing of a delayed answer after the time for filing has expired, for good cause shown.

Furthermore, it is already within the ALJ's discretion to dismiss a complaint *sua sponte*, if a complaint fails to allege facts sufficient to establish the Commission's subject matter jurisdiction over the dispute. Jurisdiction must appear on the face of a complaint, as the Commission's jurisdiction is of limited scope; section 11(a), which establishes jurisdiction over private actions for violations of the 1984 Act, gives the Commission authority to hear only complaints "alleging a violation of the Act."[6] Moreover, Commission regulations direct that complaints must include an "allegation of jurisdiction," i.e., a "synopsis of the statutory basis of the claim." 46 CFR part 502, Exhibit No. 1 to subpart E; see also Federal Rule of Civil Procedure 8(a)(1) (requiring a "short and plain statement of the grounds upon which the court's jurisdiction depends"). The jurisdictional requirement cannot be satisfied by a pro forma recitation of a section of the 1984 Act, as to do so would provide easy circumvention of the bounds of Commission authority; instead, the pleading must contain averments in its claim for relief demonstrating that the action actually does arise under the 1984 Act.[7] Therefore, if a section 10(a)(1) complaint fails to allege necessary elements required by the statute (and instead contains only those allegations necessary to establish a state law claim

[5] The conferences or agreements are: Caribbean and Central America Credit Agreement, Central America Discussion Agreement, Central America Liner Association, Hispaniola Discussion Agreement, Inter-American Freight Conference Area River Plate/Puerto Rico and U.S. Virgin Islands, Inter-American Discussion Agreement, Inter-American Freight Conference, Inter-American Freight Conference/Pacific Coast Area Conference, Inter-American Freight Conference/Puerto Rico and U.S. Virgin Islands, Jamaica Discussion Agreement, PANAM Discussion Agreement, Puerto Rico/Caribbean Discussion Agreement, Southeastern Caribbean Discussion Agreement, U.S. Atlantic & Gulf/Hispaniola Steamship Freight Association, U.S. Atlantic & Gulf Southeastern Caribbean Steamship Freight Association, U.S./Panama Freight Association, and the Venezuelan American Maritime Association.

[6] The section directs that "[a]ny person may file with the Commission a sworn complaint alleging a violation of this Act, other than section 6(g), and may seek reparations for any injury caused to the complainant by that violation."

[7] "It is well settled that the recitation of a statute can neither deprive a court of jurisdiction nor confer jurisdiction upon it. It is the operative facts pleaded alone which can do that." *Beeler* v. *United States*, 338 F.2d 687, 689 (1964), citing *Newberry* v. *Central of Georgia Ry. Co.*, 276 F. 337, 341 (5th Cir. 1921). See also *Burgess* v. *Charlottesville Savings and Loan Association*, 477 F.2d 40, 43 (4th Cir. 1973) ("complaint must, however, contain allegations affirmatively and distinctly establishing federal grounds not in mere form, but in substance") (citations omitted).

for breach of contract), the complaint would be inadequate to establish Commission jurisdiction over the claim, and would be subject to dismissal without prejudice, either *sua sponte* or on respondent's motion.[8]

In light of the guidance provided to complainants by the existing regulations, and the broad discretion to address inadequate pleadings currently enjoyed by ALJs, we are satisfied that a new procedural rule applicable only to section 10(a)(1) is not needed at this time for the efficient disposition of these cases.

This conclusion finds additional support in the fact that, since the publication of the Interpretive Rule, in February 1993, there have been only two section 10(a)(1) unpaid freight complaints filed with the Commission.[9] Both complaints included language alleging the presence of an unfair device or means. The Interpretive Rule therefore appears to have served its intended purpose by making clear the elements required to establish a violation of section 10(a)(1).[10]

Therefore, on the basis of the foregoing considerations, the Proposed Rule is withdrawn, and this proceeding is discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–18887 Filed 8–6–93; 8:45 am]

BILLING CODE 6730–01–M

[8] Federal courts have long recognized the obligation of judges to raise jurisdictional questions by their own motion. See, *e.g., KVOS, Inc.* v. *Associated Press*, 299 U.S. 269, 277 (1936); *Mansfield, C. & L. M. Ry. Co.* v. *Swan*, 111 U.S. 379, 382 (1884); *John Birch Society* v. *National Broadcasting Co.*, 377 F.2d 194, 199 (2d Cir. 1967); *Arnold* v. *Troccoli*, 344 F.2d 842, 844 (2d Cir. 1965); Federal Rule of Civil Procedure 12(h). See also *Trane Co.* v. *South African Marine Corp.*, 19 F.M.C 375, 378 (1976) (ALJ noting jurisdictional deficiencies not raised by the litigants).

[9] *Tropical Shipping & Construction Co., Ltd.* v. *Valley Wide Produce, Inc.*, Docket No. 93–05 (default judgment entered July 20, 1993); *Waterman Steamship Corp.* v. *General Foundries Inc.*, Docket No. 93–15 (complaint filed July 22, 1993).

[10] The NIT League and TWRA suggest that the Commission provide more detailed guidelines as to what facts must be pleaded to state a cause of action under section 10(a)(1). However, considerable guidance has already been provided by the Interpretive Rule. It would be counterproductive to try to resolve myriad hypothetical scenarios in a rulemaking proceeding; such particularized disputes would be decided best in the context of individual adjudications.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93–218; DA 93–931]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by Christian Television Corporation, Inc. ("CTC"), to amend the Commission's Rules to change the designation of the Tampa-St. Petersburg, Florida television market to include the community of Clearwater, Florida. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before August 27, 1993, and reply comments are due on or before September 13, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–218, adopted July 16, 1993, and released July 29, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by Christian Television Corporation, Inc., licensee of WCLF(TV), Clearwater, Florida, proposed to amend Section 76.51 of the Rules to change the designation of the Tampa-St. Petersburg, Florida television market to include the community of Clearwater, Florida.[1]

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before the Commission that WCLF and stations licensed to communities in the Tampa-St. Petersburg television market do compete for audiences and advertisers throughout most of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, CTC's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a

[1] On September 25, 1985, the Commission dismissed as moot a number of petitions and requests, including CTC's, involving mandatory carriage issues following the United States Court of Appeals decision in *Quincy Cable TV, Inc.* v. *FCC* 768 F.2d 1434 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1169 (1986), and the Commission's subsequent determination to set aside the cable "must-carry" rules. On October 10, 1985, CTC filed a petition for reconsideration of the dismissal of its rulemaking petition. In light of the Commission's recent actions implementing the provisions of Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), the Commission granted CTC's petition for reconsideration and reinstated CTC's rulemaking request.

copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 27, 1993, and reply comments on or before September 13, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–18885 Filed 8–6–93; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002 and 1312

[Ex Parte No. MC–213]

Range Tariffs—Fax Filing

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The ICC is proposing to permit carriers to supplement range tariffs by filing by fax the actual rate applicable to individual shipments prior to transport of those shipments. "Range" tariffs are tariffs that disclose neither the actual rate for a shipment nor an objective methodology by which the rate can be determined. The Commission has concluded that such tariffs do not comply fully with statutory rate disclosure requirements. Fax supplementation of these tariffs should permit carriers to respond rapidly to market demands while still complying with the statutory requirement that carriers must publish in tariffs filed with the Commission the rates that they charge.

DATES: Comments are due on September 8, 1993.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. MC–213 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Charles Langyher (202) 927–5160, [TDD for hearing impaired (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In a notice issued at 58 FR 3559 (January 11, 1993) in No. 40887, the Commission required motor common carriers to show cause why their "range" tariffs should not be ordered canceled for failure to comply with the rate disclosure requirements of 49 U.S.C. 10762. The Commission has now concluded that range tariffs do not comply fully with these requirements (see notice of decision in today's issue of the **Federal Register**), and, once the ICC completes this proceeding, carriers may no longer rely on range tariffs, standing alone, to establish transportation rates. However, because the comments indicated that carriers need a means to file rates rapidly in order to compete with less regulated transportation providers in the transportation "spot" market, the Commission is proposing to allow carriers to correct the disclosure deficiencies of range tariffs by faxing the rates applicable to specific shipments to the Commission prior to transporting those shipments.

We request public comment on all aspects of the fax filing proposal including (but not limited to) the following: (1) Whether the proposal is operationally practical from a carrier's point of view; (2) whether it would benefit shippers and/or carriers; (3) whether carriers are likely to use this tariff arrangement, or would be more likely to use some other means of achieving rate flexibility; (4) how many activating tariffs commenters estimate would be filed (yearly or daily); (5) whether a significant number of filings would occur at night or on weekends; (6) whether the proposed $1 per page filing fee would be appropriate; and (7) whether to permit carriers to use any format convenient to them (such as faxing copies of bills of lading) provided the document contains all of the information required of activating tariffs.

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.]

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in this proceeding would not have a significant economic impact on a substantial number of small entities. The economic impact would be minimal since the proposed regulation merely permits the filing by fax (rather than mail or hand delivery) of rates required by statute to be filed. Thus the economic impact is unlikely to be significant within the meaning of the Regulatory Flexibility Act.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines, Tariffs.

For the reasons set forth in the preamble, the Commission proposes to

amend Chapter X of Title 49 of the Code of Federal Regulations, Parts 1002 and 1312, as follows:

PART 1002—FEES

1. The authority citation for Part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. In § 1002.2(f), in the table, No. (74) is redesignated as (74)(i) and revised to read as follows; a new (74)(ii) is added to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

Type of proceedings	Fees
(74)(i) The filing of tariffs (except for activating tariffs), rate schedules and contracts including supplements.	$9 per series transmitted.
(74)(ii) Activating tariffs	$1 per page.
* * * * *	

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

3. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

§ 1312.14 [Amended]

4. The heading for § 1312.14 is revised to read as follows:

§ 1312.14 Statement of rates and fares (see also § 1312.41).

5. A new § 1312.41 is added to read as follows:

§ 1312.41 Range tariffs.

(a) A range tariff presents a series of rates or discounts with each rate or discount potentially applicable to any given shipment; the particular rate or discount made applicable to particular shipment(s) is given effect by the filing of a second tariff. Under these circumstances the rate or discount made applicable by the filing of the second tariff takes precedence over other filed tariffs otherwise applicable to the shipment(s).

(b) To initiate range tariff pricing, a carrier shall:

(1) File with the Commission a tariff setting forth the series (range) of rates or discounts potentially applicable to shipments moving on, or subsequent to, the effective date of the tariff. The tariff shall show on its title page the term INITIATING RANGE TARIFF.

(2) Provide in such tariffs a listing of all other filed rate tariffs otherwise applicable to the traffic to be accorded range pricing; the listing shall cite such other tariffs by the name of their issuing carrier or authorized agent and by its designated code and tariff number.

(3) Simultaneously amend all other filed rate tariffs otherwise applicable to the issue traffic to include the filed initiating range tariff as a publication governing such other tariffs.

(4) Provide an explanation of the application of the tariff, including any conditions, limitations or restrictions that attend use of the tariff; the explanation shall be contained in an Item 150 designated "Application of Tariff".

(5) File not more than one initiating range tariff to be in effect at any one time; however, different ranges of rates or discounts may be established within the one tariff, provided the application of the different ranges is clearly explained to avoid ambiguity of applicability.

(6) File initiating range tariffs with the Commission in the manner required by § 1312.3 and § 1312.4(a) and (b) of this part.

(7) Establish and maintain with the Commission a tariff filing fee account pursuant to the provisions of § 1002.2(a)(1)(ii) of this chapter, for use in making activating range tariff filings under paragraph (c) of this section.

(c) To activate for particular shipment(s) a particular rate or discount (from among the range of rates or discounts provided in the initiating range tariff established under paragraph (b) of this section), a carrier shall:

(1) Prior to transport of the specifically identified shipment(s), file with the Commission a tariff stating the actual rate or discount to be applied to the shipment(s). The tariff shall show on its title page the term ACTIVATING RANGE TARIFF and shall refer to the initiating range tariff (previously established under paragraph (b) of this section) as a control tariff. (2) Issue activating range tariffs in the carrier's own name, immediately followed by the carrier's code and the characters "6R"; immediately under this designation shall be shown the actual date of filing with the Commission (which shall serve as the date on which the tariff becomes applicable for traffic moving subsequent to the filing thereof).

Example: ICC ABCD 6R
Filed: 7/1/93

Each page of the activating range tariff (if comprised of more than one page) shall show this same information. Each page shall be sequentially numbered with the final page stating "end" following the last page number.

(3) Show on the title page of each activating range tariff a specific date of expiration, which shall not exceed 7 days from the date of the tariff's filing. In the event a carrier fails to designate an expiration date, the tariff shall expire 7 days from the date of filing.

(4) Identify the specific traffic to be accorded service under the stated rate or discount with whatever information is needed to specifically identify the intended shipments, but in any event at a minimum identifying either (a) the shipper's name, or (b) the commodity description and origin and destination points.

(5) File one copy of each activating range tariff with the Commission by hand or by "fax" transmission to (phone number(s) to be determined); to avoid the necessity of filing a separate transmittal letter (see § 1312.4(b) of this part), the title page of every activating range tariff shall provide the name, title and phone number of the party authorized to submit the publication for filing with the Commission.

(d) Except as expressly provided in this section, range tariffs are subject to the provisions of §§ 1312.1 through 1312.40 of this part.

Decided: August 8, 1993.

By the Commission: Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Walden commented with a separate expression. Commissioner Phillips dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19002 Filed 8–6–93; 8:45 am]

BILLING CODE 7035–01–P

---

49 CFR Part 1312

[Ex Parte No. MC–211]

Revision of Tariff Regulations—Indexes

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The ICC is proposing to require tariffs to contain indexes, unless the information in the tariff is arranged in a pattern readily discernible to tariff users. Because many tariffs now on file contain thousands of pages but no indexes, the rates applicable to particular shipments can be difficult (or virtually impossible) to determine. Indexes will improve the public's ability to determine the rates which are contained in the tariffs and which are therefore applicable by law.

DATES: Comments are due on September 8, 1993.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. MC–211 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Larry Herzig (202) 927–5180 or Charles E. Langyher (202) 927–5160. [TDD for hearing impaired (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In an Advance Notice of Proposed Rulemaking issued at 58 FR 3529 (January 11, 1993), the Commission requested public comment on whether to require indexes for tariffs. The Commission has now concluded that some indexing requirement is necessary if the public is to have practical access to tariff information, and is proposing a rule requiring indexes where the tariff information is not otherwise arranged in a readily discernible pattern. The public is requested to comment on (1) the proposed rule itself, (2) the frequency of index updating that should be required, (3) the implications of possible electronic tariff filing, (4) the appropriate transition time required for complying with the indexing requirement, (5) our regulatory flexibility findings (discussed below), and (6) any other matters relevant to the indexing proposal.

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.]

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in this proceeding would not have a significant economic impact on a substantial number of small entities. The economic impact, which would consist of the costs of publishing indexes, would not be significant. Carriers already are required by statute to file tariffs containing rates and other terms of service. The new rule would merely require carriers to file indexes for materials they are already obliged by law to prepare. Moreover, the economic impact would be mitigated by the fact that (1) many carriers probably already prepare internal indexes for their own use, (2) carriers would not have to provide indexes if the information in their tariffs is arranged in a pattern that is easily discernible, and (3) the proposed rule is flexible, allowing a carrier to choose an index that best accords with the carrier's preferred tariff format. For these reasons, although indexing would admittedly require additional carrier expense by what is potentially a substantial number of small entities (because all small trucking companies will have to comply), the economic impact is unlikely to be significant within the meaning of the Regulatory Flexibility Act.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines, Tariffs.

Decided: July 23, 1933.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Phillips commented with a separate expression. Commissioner Philbin concurred in part and dissented in part with a separate expression. Commissioner Walden dissented with a separate expression.

Sidney L. Strickland,

Secretary.

For the reasons set forth in the preamble, the Commission proposes to amend chapter X of title 49 of the Code of Federal Regulations, part 1312 as set forth below.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 533.

2. In § 1312.13, paragraph (a) is redesignated as paragraph (a)(1) and a new paragraph (a)(2) is added to read as follows:

§ 1312.13 Contents of tariffs.

(a) * * *

(2) Tariff information must be presented in a way that facilitates the determination of the prices and services offered, and the related classifications, rules, and practices. When information within a tariff is not arranged in a pattern readily discernible to tariff users, indexes of the exact location of such information (by item number, rule number, page number, etc.) shall be provided. The Commission reserves the right to require reissue or amendment of any tariff which does not satisfy these standards.

* * * * *

[FR Doc. 93–19003 Filed 8–6–93; 8:45 am]

BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 58, No. 151
Monday, August 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act systems of records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is amending one of its Privacy Act Systems of Records, USDA/FmHA–1, "Applicant, Borrower, Grantee or Tenant File."

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on October 8, 1993, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Dorothy Hinden, Freedom of Information Officer, General Services Staff, Farmers Home Administration (FmHA), USDA, Room 6847, South Building, Washington, DC 20250; Telephone: (202) 720–9638.

SUPPLEMENTARY INFORMATION: The purpose of this revision is to amend the system of records entitled, "USDA/FmHA–1 Applicant, Borrower, Grantee, or Tenant File." "Categories of records in the system" is modified to include appraisals. This revision also clarifies which information contained in the system will be released to the recipients under the routine uses.

Stylized language has been utilized for three routine uses: (1) To the Department of Justice for use in litigation, (2) for other disclosures in litigation, and (3) for law enforcement purposes.

The footnotes are no longer applicable under the routine uses.

The notice has been amended to delete four routine uses because they are no longer needed:

1. "Referral of information * * * for statistical reports and news releases citing borrowers' progress."
2. "Referral to employers * * * to determine repayment ability and eligibility for FmHA programs and benefits."
3. "Referral of commercial credit information * * * to make the information publicly available."
4. "Referral to a court * * * in the course of discovery * * * necessary to the proceeding."

Accordingly, USDA amends the FmHA System of Records, USDA/FmHA–1 "Applicant, Borrower, Grantee or Tenant File, USDA/FmHA," published in its entirety in 58 FR 6105, January 26, 1993.

Signed at Washington, DC, on July 23, 1993.

Mike Espy,
Secretary of Agriculture.

USDA/FmHA–1

SYSTEM NAME:

Applicant, Borrower, Grantee or Tenant File, USDA/FmHA.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes files containing applicants', borrowers', grantees', tenants', and their respective household members' characteristics, such as gross and net income, sources of income, capital, assets and liabilities, net worth, age, race, number of dependents, marital status, reference material, farm or ranch operating plans, and property appraisals. The system also includes credit reports and personal references from credit agencies, lenders, businesses, and individuals. In addition, a running record of observation concerning the operations of the person being financed is included. A record of deposits in and withdrawals from an individual's supervised bank account is also contained in those files where appropriate. In some County Offices, this record is maintained in a separate folder containing only information relating to activity within supervised bank accounts. Some items of information are extracted from the individual's file and placed in a card file for quick reference.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

2. A record from this system of records may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

3. Disclosure may be made of names, home addresses, social security numbers, and financial information to business firms in a trade area that buy chattel or crops or sell them for commission. This is in order that FmHA may benefit from the purchaser notification provisions of section 1324 of the Food Security Act of 1985 (7 U.S.C. 163(e)). The Act requires that potential purchasers of farm commodities must be advised ahead of time that a lien exists in order for the creditor to perfect its lien against such purchases.

4. Disclosure of the name, home address, and information concerning default on loan repayment when the default involves a security interest in tribal allotted or trust land. Pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701 *et seq.*), liquidation may be pursued only after offering to transfer the account to an eligible tribal member, the tribe, or the Indian Housing Authority serving the tribe(s).

5. Referral of names, home addresses, social security numbers, and financial information to a collection or servicing contractor, financial institution, or a local, State, or Federal agency, when FmHA determines such referral is

appropriate for servicing or collecting the borrower's account or has provided for in contracts with servicing or collection agencies.

6. It shall be a routine use of the records in this system of records to disclose them in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the agency collected the records.

7. Referral of name, home address, and financial information for selected borrowers to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, when FmHA determines such referral is appropriate to encourage the borrower to refinance their FmHA indebtedness as required by Title V of the Housing Act of 1949, as amended (42 U.S.C. 1471).

8. Referral of legally enforceable debts to the Department of the Treasury, Internal Revenue Service (IRS), to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made, in accordance with the IRS regulations at 26 CFR 301.6402–6T, Offset of Past Due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A.

9. Referral of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the FmHA in order to collect debt under the provisions of the Debt Collection Act of 1982 (5 U.S.C. 5514) by voluntary repayment, administrative or salary offset procedures, or by collection agencies.

10. Referral of names, home addresses, and financial information to lending institutions when FmHA determines the individual may be financially capable of qualifying for credit with or without a guarantee.

11. Disclosure of names, home addresses, social security numbers, and financial information to lending institutions that have a lien against the same property as FmHA for the purpose of the collection of the debt. These loans can be under the direct and guaranteed loan programs.

12. Referral to private attorneys under contract with either FmHA or with the Department of Justice for the purpose of foreclosure and possession actions and collection of past due accounts in connection with FmHA.

13. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

14. Referral of names, home addresses, social security numbers, and financial information to the Department of Housing and Urban Development (HUD) as a record of location utilized by Federal agencies for an automatic credit prescreening system.

15. Referral of names, home addresses, social security numbers, and financial information to the Department of Labor, State Wage Information Collection Agencies, and other Federal, State, and local agencies, as well as those responsible for verifying information furnished to qualify for Federal benefits, to conduct wage and benefit matching through manual and/or automated means, for the purpose of determining compliance with Federal regulations and appropriate servicing actions against those not entitled to program benefits, including possible recovery of improper benefits.

16. Referral of names, home addresses, and financial information to financial consultants, advisors, or underwriters, when FmHA determines such referral is appropriate for developing packaging and marketing strategies involving the sale of FmHA loan assets.

* * * * *

[FR Doc. 93–18994 Filed 8–6–93; 8:45 am]
BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

[Docket No. 93–094–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered

organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
93–175–01, renewal of permit 91–205–01, issued on 10–22–91.	Calgene, Incorporated	07–02–93	Rapeseed plants genetically engineered to express an oil modification gene.	California.
93–074–03	Upjohn Company	07–12–93	Cucumber plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Georgia.
93–105–02	University of Florida	07–12–93	Peanut plants genetically engineered to express resistance to tomato spotted wilt virus and a marker gene for tolerance to the phosphinothricin class of herbicides.	Florida.
93–118–01	New York State Agricultural Experiment Station.	07–12–93	Squash plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	New York.
93–165–01	Upjohn Company	07–12–93	Squash plants genetically engineered to express resistance to zucchini yellow mosaic virus and watermelon mosaic virus 2.	Maryland.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 et seq.), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 3rd day of August 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–18996 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 93–093–1]

Receipt of A Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and

Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
93–183–01, renewal of permit 92–156–01, issued on 09–23–92.	Calgene, Incorporated ...	07–02–93	Rapeseed plants genetically engineered to express sense or anti-sense desaturase genes, a thioesterase gene, and a reductase gene, for oil modification.	Georgia.

Done in Washington, DC, this 3rd day of August 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–18995 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Appeal Exemption, Burgett Fire Area

AGENCY: Forest Service, USDA.

ACTION: Notice: Burgett Fire Area Decision Administrative Appeal Exemption.

SUMMARY: On July 30, 1993, Lincoln National Forest Supervisor, Lee Poague, made a decision to approve the Burgett Fire Rehabilitation Plan which will provide for rehabilitation of the fire area and assist in restoring the forest resources of the area to pre-fire conditions.

The 4,293 acre Burgett Fire in new Mexico damaged timber and other resources. The Lincoln National Forest has completed an environmental analysis on the impact of this wildfire. It will be necessary to rehabilitate sections of the fire area and recover timber resources in a short, emergency timeframe to minimize damages to resources damaged by the fire. Damaged timber that is selected to be harvested needs to be removed within 6 months or the value will decrease due to rapid deterioration. If the decision document resulting from this environmental analysis is appealed under 36 CFR part 217, valuable time in rehabilitation and resource recovery are likely to be lost. I have therefore determined that, pursuant to 36 CFR 217.4(a)(11), decisions involving rehabilitation and timber recovery within the Burgett Fire area are exempt from administrative appeal.

Copies of the Environmental Assessment are available upon request at the Forest Supervisor's office, Federal Building, 11th and New York Ave., Alamogordo, NM 88310.

DATES: This notice is effective August 9, 1993.

ADDRESSES: Direct comments to: Larry Henson, Regional Forester, 1570 Southwestern Region, USDA Forest Service, 517 Gold Avenue, SW., Albuquerque, New Mexico, 87102.

FOR FURTHER INFORMATION CONTACT: Milo Larson, Director, Timber Management, (505) 842–3240. Direct requests for a copy of the appeal regulation to Pat Jackson at the above address.

Dated: August 2, 1993.

Arvin L. White,

Acting Regional Forester.

[FR Doc. 93–18920 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–11–M

Polyoxometalate Bleaching Consortium Notice of Intent To Form a Consortium

Program Description

Purpose

The USDA, Forest Service, Forest Products Laboratory (FPL) is seeking industrial partners to form a consortium dedicated to the application of polyoxometalate bleaching as a pulp treatment Process under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a).

An industrial partner may be a Federal Agency, university, private business, nonprofit organization, research or engineering entity, or combination of the above.

A summary of the proposed research and development is as follows:

(a) All aspects of pretreatment prior to application of polyoxometalate oxidation.

(b) All aspects of reactor design and operating principles for application of the polyoxometalate delignifying and bleaching agents.

(c) All aspects of catalyst recovery and regeneration processes.

(d) All aspects of pulp washing.

(e) All systems for treatment of sideproduct and effluent streams.

(f) All aspects of mill closure procedures.

(g) All polyoxometalate compounds intended for use as oxidation catalysts in pulping or bleaching.

(h) All combinations of polyoxometalates and oxidants, the latter including chemical oxidants and electrochemical oxidation processes.

(i) All aspects of bleaching sequence design that entail the combination of polyoxometalate stages with additional acidic, basic, and/or oxidative stages.

A meeting of potential industrial partners will be held October 5 and 6, 1993, to discuss formation of the consortium, the present status of the technology, and the anticipated technology to be developed under the auspices of the consortium. Attendance at the meeting is open to anyone; however, prior to attending the meeting,

each person attending must be bound by a Proprietary Information Disclosure Agreement which requires that proprietary or confidential information disclosed at the meeting as confidential be kept confidential. Copies of the agreement may be obtained by writing the address shown below. Along with the request for a copies of the agreement, the requester must provide the legal name of the entity making the request and the name(s) of the person(s) who will represent the entity.

The FPL Grants and Agreements Officer will negotiate and enter into Cooperative Research and Development Agreements (CRADAs) with individual members of the consortium .The CRADAs will provide for statements of the mutuality of interest of the parties, the actions to be performed by the parties which contribute to the research and development, and the disposition of intellectual property rights arising from the research. It is anticipated that each CRADA will provide the industrial partner with a right of first refusal to negotiate for a nonexclusive, a partially exclusive, a co-exclusive, or an exclusive license to the technology derived from the research under the CRADA. A copy of a sample CRADA may be obtained by writing to the address below.

The execution of a CRADA does not commit or obligate the United States in any way to provide further support of a project or any portion thereof other than as provided for in the CRADA.

The address to obtain a Proprietary Information Disclosure Agreement or sample CRADA is: John G. Bachhuber, Grants and Agreements Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398.

Done at Madison, WI, on July 27, 1993.

Kenneth R. Peterson,

Acting Director.

[FR Doc. 93–19018 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–11–M

Enzymatic Deinking of Recycled Fibers Correction of Notice of Intent to Form a Consortium

Program Description

Purpose

The USDA, Forest Service, Forest Products Laboratory (FPL) announced the formation of a consortium dedicated to the enzymatic deinking of recycled fibers under the authority of the Federal Transfer Act in the **Federal Register**, Vol. 58, No. 134 dated Thursday, July 15, 1993. (58 FR 38115). The notice indicating a meeting of potential industrial partners would be held on August 24, 1993, to discuss the formation of the consortium, the present status of the technology, and the anticipated technology to be developed under the auspices of the consortium. The date of the meeting has been changed from August 24, 1993, to August 26 and 27, 1993. All other information remains as stated in the original announcement.

Done at Madison, WI, on July 27, 1993.

Kenneth R. Peterson,

Acting Director.

[FR Doc. 93–19017 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–11–M

Timber Bridge Research Joint Venture Agreements; Solicitation of Applications and Application Guidelines

Program Description

Purpose

The Federal Highway Administration and the USDA, Forest Service, Forest Products Laboratory (FPL), are working cooperatively under Pub. L. 102–240, The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, on Research for the development of wood in transportation structures.

The FPL is now inviting proposals for specific areas of the research under the authority of the Food Security Act of 1985 (7 U.S.C. 3318(b) and will award competitive Research Joint Venture Agreements for cooperative research related to wood in transportation structures. The specific research areas are stated within this announcement.

Eligibility

Proposals may be submitted by any Federal Agency, university, private business, nonprofit organization, or any research or engineering entity.

An applicant must qualify as a responsible applicant in order to be eligible for an award. To qualify as responsible, an applicant must meet the following standards:

(a) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including any to be obtained through subagreement(s)) or contracts;

(b) Ability to comply with the proposed or required completion schedule for the project;

(c) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(d) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants, agreements, and contracts from the Federal government; and

(e) Otherwise be qualified and eligible to receive an award under the applicable laws and regulations.

Available Funding

Available funding is shown under the specific research areas, below. The FPL will reimburse the cooperator not-to-exceed eighty percent (80%) of the total cost of the research. The proposing entity may contribute the indirect costs as its portion of the total cost of the research. Indirect costs will not be reimbursed to State Cooperative Institutions. State Cooperative Institutions are designated by the following:

(a) The Act of July 2, 1862 (7 U.S.C. 301 and the following), commonly known as the First Morrill Act,

(b) The Act of August 30, 1890 (7 U.S.C. 321 and the following), commonly known as the Second Morrill Act, including the Tuskegee Institute;

(c) The Act of March 2, 1887 (7 U.S.C. 361a and the following), commonly known as the Hatch Act of 1887;

(d) The Act of May 8, 1914 (7 U.S.C. 341 and the following), commonly known as the Smith-Lever Act;

(e) The Act of October 10, 1962 (16 U.S.C. 582a and the following), commonly known as the McIntire-Stennis Act of 1962; and

(f) Sections 1429 through 1439 (Animal Health and Disease Research), sections 1474 through 1483 (Rangeland Research) of Public Law 95–113, as amended by Public Law 97–98.

Definitions

(a) Grants and Agreements Officer means the Grants and Agreements Officer of the FPL and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) Awarding Official means the Grants and Agreements Officer and any other officer or employee of the Department of Agriculture to whom the authority to issue or modify awards has been delegated.

(c) Budget Period means the interval of time (usually twelve months) into which the project period is divided for budgetary and reporting purposes.

(d) Department or USDA means the U.S. Department of Agriculture.

(e) Research Joint Venture Agreement means the award by the Grants and Agreements Officer of his/her designee

to a cooperator to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research problem area identified herein.

(f) Cooperator means the entity designated in the Research Joint Venture Agreement award document as the responsible legal entity to whom a Research Joint Venture Agreement is awarded.

(g) Methodology means the project approach to be followed to carry out the project.

(h) Peer review group means an assembled group of experts or consultants qualified by training and/or experience in particular scientific or technical field to give expert advice on the technical merit of grant applications in those fields.

(i) Principal Investigator means an individual who is responsible for the scientific and technical direction of the project, as designated by the cooperator in the application and approved by the Grants and Agreements Officer.

(j) Project means the particular activity within the scope of one or more of the research areas identified herein.

(k) Project Period means the total time approved by the Grants and Agreements Officer for conducting the proposed project as outlined in an approved application or the approved portions thereof.

(1) Research means any systematic study directed toward new or fuller knowledge of the subject field. Areas: Proposals are currently being solicited in the following areas:

(a) Problem Area I: Guidelines for the Development of Waterproof Asphalt Wearing Surface Systems for Timber Bridge Decks: To develop waterproof asphalt wearing surface systems for timber bridge decks and to develop a comprehensive handbook for the design, application, and maintenance of asphalt wearing surfaces for timber bridge decks. Total estimated cost of the research: $182,500; estimated Federal funding: $146,000.

(b) Problem Area II: Economics of Timber Bridges: To determine the comparative initial cost, service life, and life cycle cost of various types of timber bridge superstructures, exclusive of those constructed under the Forest Service or Federal Highway Administration demonstration bridge programs, compared to superstructures constructed of other materials. Total estimated cost of the research: $112,500; estimated Federal funding: $90,000.

(c) Problem Area III: Moisture Protection for Timber Bridges: To develop, refine, and/or evaluate a variety of coatings and coverings for protecting bridge members from moisture. Total estimated cost of the research: $43,750; estimated Federal funding: $35,000.

(d) Problem Area IV: Treatability of Heartwood: (i) To develop a comprehensive literature review of the composition, treatability, and subsequent durability of heartwood, with principle emphasis on U.S. wood species likely to be used for the construction of transportation structures; (ii) to analyze available information and identify the cost critical needs for improving the long-term durability of wood members with heartwood; (iii) to identify those combinations of species and technologies that seemingly have the greatest potential for improving the treatability of heartwood in species currently considered refractory; (iv) to develop recommendations for research initiatives which, if successful, will yield significant advancements in either product durability or treating methodology; (v) to develop recommendations for research that have high probability for success and will contribute incremental gains in either product durability or treating methodology. Total estimated cost of the research: $89,375; estimated Federal funding: $71,500.

(e) Problem Area V: Standard Plans and Specifications for Timber Bridge Substructures and Box Culverts: To develop standard plans and specifications for several or all of the following timber systems: pile abutments, post and sill abutments, crib abutments, pile bents frame bents, and box culverts. Total estimated cost of the research: $83,750; estimated Federal funding: $67,000.

(f) Problem Area VI: Development of Sound Barriers: To investigate and develop wood applications for sound barriers. Total estimated cost of the research: $111,250; estimated Federal funding: $89,000.

(g) Problem Area VII: Shear Strength of Sawn Lumber Beams: To develop and present solutions to the following problem areas: (i) Define ranges or typical sizes of checks and splits that are found in timber members of the sizes commonly used in bridge construction; (ii) develop and experimentally verify shear design criteria for unsplit beams based on relationship between beam size, ASTM shear block test results, and shear strength, and compare this relationship to that found in recent research for unsplit glued laminated timber beams. Total estimated cost of the research: $168,750; estimated Federal funding: $135,000.

Programmatic Contact

For additional information, contact John G. Bachhuber, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398.

Proposal Preparation

Application Materials

An Application Kit and a copy of this solicitation will be made available upon request. The kit contains detailed information on each Problem Area, required forms, certifications, and instructions for preparing and submitting agreement applications. Copies of the Application Kit and this solicitation may be requested from: Grants and Agreements, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398, Telephone Number (608) 231–9282.

Proposal Format

(a) Proposal Cover Page

(1) Form CSRS–661, Application for Funding, must be completed in its entirety. The program to which you are applying is "Wood in Transportation Structures." The Program Numbers and Areas are shown above.

(2) One copy of Form CSRS–661 must contain the pen-and-ink signatures of the proposing Principal Investigator(s) and the Authorized Organizational Representative who possesses the necessary authority to commit the applicant entity's time and other relevant resources. Investigators who do not sign the cover sheet will not be listed on the awards documents in the event an award is made.

(b) Project Summary

Each proposal must contain a project summary which may not exceed 2 single- or double-spaced pages in length. This summary is not intended for the general reader; consequently, it may contain technical language. The project summary should be a self-contained, specific description of the activity to be undertaken and should focus on:

(1) Overall project goal(s) and supporting objectives; and

(2) Plans to accomplish project goal(s).

(c) Project Description

The specific aims of the project description may not exceed 15 single- or

double-spaced pages and must contain the following components:

(1) Introduction. A clear statement of the long-term goal(s) and supporting objectives of the proposed project should preface the project description. The most significant published works in the field under consideration, including work of key project personnel on the current proposal, should be reviewed. All work cited, including that of key personnel, should be cited.

(2) Experimental Plan. The hypotheses or questions being asked and the methodology to be applied to the proposed project should be stated explicitly and must include:

(i) A description of the investigations and/or experiments proposed and the sequence in which the investigations and/or experiments are to be performed;

(ii) Techniques to be used in carrying out the proposed project, including the feasibility of the techniques;

(iii) Results expected;

(iv) Means by which experimental data will be interpreted or analyzed;

(v) Pitfalls that may be encountered;

(vi) Limitations to proposed procedures; and

(vii) Tentative schedule for conducting major steps involved in these investigation/experiments.

In describing the experimental plan, the applicant must explain fully any materials, procedures, situations, or activities that may be hazardous to personnel (whether or not they are directly related to a particular phase of the proposed project), along with an outline of precautions to be exercised to avoid or mitigate the effects of such hazards.

(d) Facilities and Equipment

All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed.

(e) Collaborative Arrangements

If the nature of the proposed project requires collaboration or subcontractual arrangements with other scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator/subcontractor and provide a full explanation of the nature of the relationship. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborator have agreed to render this service.

(f) Vitae, Publications, and Conflicts of Interest Lists

Curriculum Vitae. A curriculum vitae should be included for each key person associated with the project. The vitae must be limited to a presentation of credentials related to the study, and must be no more than two pages each in length, excluding publications list(s).

Publications Lists. A chronological list of all publications in referenced journals during the past five years, including those in press, must be provided for each key project person for whom a curriculum vitae is provided. The list should follow a format used in journals. In cases where key individuals do not publish in journals, a chronological list of work for the past five years may be provided in lieu of the list of publications.

Conflicts of Interest List. To assist program staff in excluding from proposal review individuals who have conflicts of interest with project personnel, a list of the following individuals should be appended for each project person:

(1) Collaborators on research projects within the past five years;

(2) Co-authors on publications issued within the past five years;

(3) Thesis or postdoctoral advisors within the past five years; and

(4) Graduate students or postdoctoral associates within the past five years.

(g) Budget

A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. Form CSRS–55, Budget, must be used for this purpose. A copy of Form CSRS–55, along with instructions for its completion, is contained in the Application Kit and may be reproduced as needed.

Funds may be requested under any of the categories listed on Form CSRS–55, provided that the item or service for which support is requested is identified as necessary for successful conduct of the proposed project, is allowable under the authorizing legislation, the applicable Federal cost principles, and these guidelines, and is not prohibited under any applicable Federal statute.

Salaries of project personnel who will be working on the project may be requested in proportion to the effort they will devote to the project.

All salaries and wages, nonexpendable equipment, foreign travel, and "All Other Direct Costs" for which support is requested must be itemized and justified on separate sheet of paper placed immediately behind the Form CSRS–55.

(h) Current and Pending Support

Each applicant must complete Form CSRS–663, Current and Pending Support, a copy of which is contained in the Application Kit. The purpose of this form is to identify any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for personnel involved is included in the proposed budget. Analogous information must be provided for any pending proposals that are being considered by, or which will be submitted in the near future to, other possible sponsors. Concurrent submission of identical or similar project to other possible sponsors will not prejudice the review or evaluation of a project. However, a proposal that duplicates or overlaps substantially with a proposal funded or that will be funded by another sponsor will not be funded.

(i) Appendices

Each project description is expected to be complete. However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are unsuitable for inclusion in the text of the proposal), the number of copies of additional information should match the number of copies of the application submitted. Extraneous materials will not be used in the evaluation process.

(j) Organizational Management Information

Specific management information relating to an applicant entity must be submitted on a one-time basis prior to the award if the proposed cooperator has not received other awards from FPL and such information was not previously submitted. FPL will request management information (e.g., bank references, financial statements, statements of purpose, etc.) from "new" cooperators once a proposal has been recommended for funding.

Proposal Submission

What to Submit

An original and five copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left-hand corner (Do not bind). All copies of the proposal must be submitted in one package.

Where and When to Submit

Proposals submitted through the regular mail must be received by the Grants and Agreements Officer by 2 p.m., October 25, 1993, and should be sent to the following address: Grants and Agreements Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398, Telephone (608) 231–9282.

Proposal Review, Evaluation, and Disposition

Proposal Review

All proposals received will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to this solicitation. Proposals that do not fall within solicitation guidelines will be eliminated from competition; one copy will be returned to the applicant and the remainder will be destroyed. All accepted proposals will be reviewed by the Grants and Agreements Officer, qualified officers of employees of the Department, and by peer panel(s) of scientists or others who are recognized specialists in the areas covered by the proposals. Peer panels will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals.

Evaluation Criteria

The peer review panel(s) will take into account the following criteria in carrying out its review of responsive proposal submitted:

(a) Scientific merit of proposal.

(1) Conceptual adequacy of hypothesis;

(2) Clarity and delineation of objectives;

(3) Adequacy of the description of the undertaking and suitability and feasibility of methodology;

(4) Demonstration of feasibility through preliminary data;

(5) Probability of success of project;

(6) Novelty, uniqueness, and originality.

(b) Qualifications of proposed project personnel and adequacy of facilities.

(1) Training and demonstrated awareness of previous and alternative approaches to the problem identified in the proposal and performance record and/or potential for future accomplishments;

(2) Time allocated for specific attainment of objectives;

(3) Institutional experience and competence in subject area; and

(4) Adequacy of available or obtainable support personnel, facilities, and instrumentation.

Proposal Disposition

When the peer review panel(s) has completed its deliberations, the USDA program staff, based on the recommendations of the peer review panel(s), will recommend to the Awarding Official that the project be (a) approved for support from currently available funds or (b) declined due to insufficient funds or unfavorable review.

USDA reserves the right to negotiate with the Principal Investigator and/or the submitting entity regarding project revisions (e.g., reduction in scope of work), funding level, or period of support prior to recommending any project for funding.

A proposal may be withdrawn at any time before a final funding decision is made. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by USDA for one year, and remaining copies will be destroyed.

SUPPLEMENTARY INFORMATION:

Grant Awards

Within the limit of funds available for such purpose, the awarding official shall make awards to those responsible eligible applicants whose proposals are judged most meritorious under the evaluation criteria and procedures set forth in this solicitation and application guidelines.

The date specified by the awarding official as the beginning of the project period shall not be later than March 15, 1994.

All funds awarded shall be expended only for the purpose for which the funds are awarded in accordance with the approved application and budget, the terms and conditions of any resulting award, and the applicable Federal cost principles.

Obligation of the Federal Government

Neither the approval of any application nor the award of any Research Joint Venture Agreement commits or obligates the United States in any way to provide further support of a project or any portion thereof.

Other Conditions

The FPL may, with respect to any class of awards, impose additional conditions prior to or at the time of any award, when, in the FPL's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of Research Joint Venture Agreement funds.

Done at Madison, WI on July 29, 1993.

Susan L. LeVan,

Acting Director.

[FR Doc. 93–19019 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Gooding Constructed Wetland; Resource Conservation and Development (RC&D) Measure Gooding County

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho, 83705, telephone (208) 334–1601.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Gooding Constructed Wetland RC&D Measure, Gooding County, Idaho.

The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Gooding Constructed Wetland RC&D Measure will reduce nutrients and sediment being delivered to the Snake River from irrigation return flows. This measure will demonstrate to local landusers how constructed wetland systems can be used to improve the water quality of irrigation return flows.

This Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul H. Calverley. The FONSI has been sent to various federal, state and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days

after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local Officials)

Dated: August 2, 1993.

Paul H. Calverley,

State Conservationist.

[FR Doc. 93–18927 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: User Satisfaction Surveys.

Agency Form Numbers: ITA–4015P, 4099P–1, 4103P, 4106P, 4107P, 4108P–A1 and A2, 4108P–C1 and C2, 4108P–E–I–T and W, 4117P, 4121P–4123P, 4125P–4126P, 4129P–4131P, and 735P.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 3,683 hours.

Number of Respondents: 26,195.

Avg Hours Per Response: Ranges between 3 and 60 minutes.

Needs and Uses: ITA provides information and counseling products and services that help give U.S. exporters a leading edge in world markets. There is a continuous need to assess user satisfaction with these products and services. These evaluation forms will provide ITA offices with flexible information collection forms to send out to customers following any transaction. This information will be used by individual offices within ITA to improve their ability to deliver services or enhance products. In addition, the information will enable staff to set priorities, maximize resources, develop base performance measures, and establish indicators for use with other available benchmarks.

Affected Public: Businesses or other for–profit institutions; state or local governments; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Gary Waxman, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: National Telecommunications and Information Administration (NTIA).

Title: National Telecommunications Facilities Program (PTFP) Grant Application.

Agency Form Number: None.

OMB Approval Number: 0660–0003.

Type of Request: Revision of a currently approved collection.

Burden: 56,250 hours.

Number of Respondents: 450.

Avg Hours Per Response: 125 hours.

Needs and Uses: The PTFP is a grant–making program which operates an annual application review process. The application forms are the only method by which NTIA can comparatively evaluate over 450 proposed projects each fiscal year.

Affected Public: State and local governments; non–profit corporations; Indian Tribes.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Jonas Niehardt, (202) 395–3785, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above.

Dated: August 3, 1993

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–19028 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

[Docket 36–93]

Foreign-Trade Zone 40—Cleveland, OH; Application for Subzone Picker International, Inc., Facility (Medical Equipment) Valley View, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland Regional Port Authority, grantee of FTZ 40, requesting special-purpose subzone status for the medical diagnostic equipment processing/distribution facility of Picker International, Inc. in Valley View, Ohio, within the Cleveland, Ohio, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 30, 1993.

The Picker facility (65,000 sq. ft.) is located at 7825 Hub Parkway, Valley View (Cuyahoga County), Ohio, 10 miles south of Cleveland. The facility (14 employees) is used for final assembly, testing, packaging and distribution of medical diagnostic imaging equipment, including: magnetic resonance, computed tomography, nuclear medicine and X-ray equipment. Manufacturing of the major components and assemblies occurs at other Picker plants in northern Ohio. Certain components or assemblies are sourced from abroad (approx. 26% of total value), including: X-ray generators, mobile X-ray units, vascular gantry and components, mammography units, MRI tape drives, MRI gradient tubes, patient handling systems, magnet beams, and tubes, patient handling system, magnet beams, and electromagnets.

Zone procedures would exempt Picker from Customs duty payments on the foreign products that are reexported. On domestic sales, the company would be able to choose the duty rates that apply to finished diagnostic products (2.1% to 4.7%). The duty rates on foreign-sourced items range from 2.1% to 4.2%. Foreign merchandise and finished products held for export would be eligible for an exemption from certain state and local ad valorem taxes. The application indicates that zone savings would help improve the international competitiveness of Picker's Ohio plants.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 8, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period October 25, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Department of Commerce District Office, 600 Superior Avenue East, Room 700, Cleveland, Ohio 44114.

Office of the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 30, 1993

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 93–19037 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–05–P

[Order No. 652]

Approval of Export Processing Activity; Total Foods Corporation (Confectionery Blends); Within Foreign-Trade Zone 70; Detroit, MI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the Greater Detroit Foreign Trade Zone, Inc., grantee of FTZ 70, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of Total Foods Corporation, to process under zone procedures foreign-origin sugar (up to 50 million pounds annually) and foreign-origin dairy products for certain confectionery blends for export within FTZ 70, Detroit, Michigan (filed 9–29–92, FTZ Docket A(32b1)–1–92; Doc. 34–93, assigned 7–26–93);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is for export only (§ 400.32(b)(1)(ii)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign-origin sugar and foreign-origin dairy product admitted to the zone for the Total Foods operation shall be reexported.

Signed at Washington, DC, this 29th day of July, 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 93–19038 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 650]

Grant of Authority for Subzone Status; American Feeds & Livestock Co., Inc., (Animal Feeds) Howard Lake, MN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of Foreign-Trade Zone No. 119 for authority to establish a special-purpose subzone for export activity at the animal feed manufacturing plant of American Feeds & Livestock Company, Inc., in Howard Lake, Minnesota, was filed by the Board on June 23, 1992, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 20–92, 57 FR 29277, 7–1–92); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export processing is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 119C) at the American Feeds & Livestock Company, Inc., plant, in Howard Lake, Minnesota, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign-origin dairy products admitted to the subzone shall be reexported.

Signed at Washington, DC, this 23rd day of July, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli

Acting Executive Secretary

[FR Doc. 93–19039 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–05–P

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On July 7, 1993, the Department of Commerce issued the final results of its 1991–1992 administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings), and parts thereof, from France, Italy, Germany, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews covered 41 manufacturers/exporters and the period May 1, 1991, through April 30, 1992.

Subsequent to issuance of the final results, NSK Ltd. and NSK Corporation, and RHP Bearings and RHP Bearings Inc. filed motions with the Court of International Trade to restrain, until further notice, the Department of Commerce from publishing the final results of these reviews. On July 15, 1993, the Court of International Trade granted these motions. As a result, the Department of Commerce determined to publish the final results of these reviews

for all companies except NSK Ltd. and NSK Corporation, and RHP Bearings and RHP Bearings Inc.

On July 21, 1993, the Court of International Trade lifted the order restraining the Department of Commerce from publishing the final results of review for NSK Ltd. and NSK Corporation, and RHP Bearings and RHP Bearings Inc. Accordingly, we are now publishing the final results of review for these companies.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Michael R. Rill or Richard R. Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 1993, the Department of Commerce (the Department) issued the final results of its 1991–1992 administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings), and parts thereof, from France, Italy, Germany, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews covered 41 manufacturers/exporters and the period May 1, 1991, through April 30, 1992.

On July 13, 1993, and July 15, 1993, respectively, NSK Ltd. and NSK Corporation (collectively, NSK), and RHP Bearings and RHP Bearings Inc. (collectively, RHP), filed motions with the Court of International Trade (CIT) to hold the Department in contempt of court for not following in these reviews previous CIT decisions that the Department should add U.S. direct selling expenses to foreign market value in Exporter's Sales Price (ESP) comparisons, rather than deducting such expenses from ESP. The motions further requested that the CIT sanction the Department by restraining it from publishing the final results of these reviews for NSK and RHP.

The CIT granted plaintiffs' motions on July 15, 1993, thereby restraining, until further notice, the Department from publishing the final results of these reviews for NSK and RHP. Accordingly, on July 16, 1993, prior to publication in the **Federal Register**, the Department amended its notice of July 7, 1993, to exclude the final results of review for NSK and RHP.

On July 21, 1993, the CIT lifted the order restraining the Department from publishing the final results of review for NSK and RHP. Therefore, we are now publishing the final results of review for these firms.

Amended Final Results of Review

Based on our analysis of the comments received on our preliminary results of these reviews, we determine that the following weighted-average margins exist for the period May 1, 1991, through April 30, 1992:

Company	BBs	CRBs	SPBs
Japan			
NSK	23.95	31.43	(1)
United Kingdom			
RHP/NSK	49.14	45.35	

[1] No U.S. sales during the review period.

Our description of clerical error corrections to our preliminary results, and our responses to comments received on both general issues and issues specific to NSK and RHP, are contained in our July 26, 1993, notice of final results for these reviews (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and United Kingdom, 58 FR 39729, July 26, 1993).

Cash Deposit Requirements

We will direct the Customs Service to collect the percentage cash deposit rate against the entered value of each of the respondent's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Our calculation of these rates and the procedures governing the collection of cash deposits of estimated antidumping duties are set forth in our July 26, 1993, notice of final results for these reviews (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and United Kingdom, 58 FR 39729, July 26, 1993).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Our calculation of assessment rates and the procedures governing the assessment of antidumping duties are set forth in our July 26, 1993, notice of final results for these reviews (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and United Kingdom, 58 FR 39729, July 26, 1993).

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1657(a)(1)), and 19 CFR 353.22 (1990).

Dated: August 5, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19163 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–038]

Bicycle Speedometers From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from a domestic producer, the Department of Commerce has conducted an administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers one manufacturer/exporter of this merchandise sold in the United States for the period November 1, 1991 through October 31, 1992. We preliminarily find that a margin of 4.51 percent exists for the manufacturer/exporter, Cat Eye, Co., Ltd.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 1972, the Department of Treasury published in the **Federal Register** (37 FR 24826) an antidumping finding on bicycle speedometers from Japan. On November 24, 1992, a domestic manufacturer, Avocet, Inc. (Avocet), in accordance with 19 CFR 353.22(a), requested that the Department of Commerce (the Department) conduct an administrative review. Avocet is an interested party as defined in section 771(9)(C) of the Tariff Act of 1930, as amended (the Tariff Act). We published a notice of initiation of the antidumping duty administrative review on December 29, 1992 (57 FR 61873). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act.

Scope of the Review

Imports covered by the review are shipments of bicycle speedometers. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 9029.20.20, 9029.40.80, and 9029.90.40. HTS item numbers are provided for convenience and Customs purposes. Our written description remains dispositive.

The review covers the shipments of Cat Eye Co., Ltd. (Cat Eye), a manufacturer/exporter of bicycle speedometers during the period November 1, 1991 through October 31, 1992.

From July 12 through July 16, 1993, we verified the home market and U.S. sales data submitted by Cat Eye. During the verification, we noted that Cat Eye failed to provide information on certain of its home market sales. While Cat Eye was willing to provide the missing sales at the verification, we refused to accept this new information as it was considered untimely. Therefore, as best information available, we have assumed that these missing sales had the highest home market price within each model of those sales reported on a timely basis. We have included those values in our weighed-average foreign market values (FMV).

United States Price

The Department used purchase price, as defined in section 772 of the Tariff Act, to calculate U.S. price. For sales to the first unrelated purchaser in the United States, purchase price was based on the free on board (f.o.b.), packed price from the producer. For sales to an unrelated Japanese trading company intended for sale in the United States under the "Specialized" label, purchase price was also based on the f.o.b., packed price from the producer. We made adjustments where applicable, for foreign inland freight, brokerage and handling charges, and amortization of tooling charges. The tooling amortization adjustment is an addition to U.S. price and incorporates the advance payment, on a per unit basis, the tooling charges the trading company paid Cat Eye to produce the "Specialized" models. No other adjustments were claimed or allowed.

Foreign Market Value

For its FMV calculation, the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, delivered price to unrelated purchasers. We made adjustments, where applicable, for inland freight, quantity rebates, and differences in credit, direct advertising, and packing costs. In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise by applying to the FMV the difference between the variable cost of production of the model sold in the United States and the variable cost of production of the most similar model sold in the home market, in accordance with § 353.57 of the Department's regulations. Because the information we received was inadequate to assign difference in merchandise values on a model-specific basis, we have applied as best information available the lowest variable cost difference for these preliminary results. No other adjustments were claimed or allowed.

In general in administrative reviews, the Department relies on monthly weighted-average prices in the calculation of FMV. However, after comparing the monthly and annualized weighted-average price for each model, we determined that there was an insignificant amount of variance between the two and that there was no discernable correlation between price and time during the period reviewed. Therefore, we calculated FMV for each model based on annual weighted-average prices.

Preliminary Results of the Review

As a result of our comparison of U.S. price to FMV, we preliminarily determine that the margin for Cat Eye is 4.51 percent for the period November 1, 1991 through October 31, 1992.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or on the first workday thereafter. Case briefs and/or written comments may be submitted not later than 30 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any comments submitted or made during a hearing.

Upon completion of this administrative review, the Department will issue appraisement instructions concerning the respondent directly to Customs.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of

the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the "new shipper" rate established in the first administrative review, as discussed below.

On May 25, 1993, the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that is appropriate to adopt the "new shipper" rate established in the first final results of the administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of the review will be 26.44 percent, the "new shipper" rate established in the first final results of administrative review published by the Department (47 FR 28978, July 2, 1982).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22.

Dated: July 30, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19032 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request from Action Electronics Co., Ltd. (Action), Proton Electronic Industrial Co., Ltd. (Proton) and Tatung Co. (Tatung) (collectively, the respondents), the Department of Commerce (the Department) initiated reviews for these respondents on May 27, 1993 for the period April 1, 1992 through March 31, 1993. We received timely requests for withdrawal from this review from the respondents. Because there were no requests for review from other interested parties we are terminating this review.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Heaney or David Genovese, Office of Antidumping Compliance, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4475/4697.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984, the Department published in the **Federal Register** (49 FR 18336) the antidumping duty order on color television receivers, except for video monitors, from Taiwan. On April 9, 1993, in accordance with 19 CFR 353.22(c), we initiated an administrative review of those orders for the period April 1, 1992 through March 31, 1993 (58 FR 18374).

We had initiated reviews for Action, Proton, and Tatung covering sales of color television receivers, except for video monitors, during the period of review. We received timely requests for withdrawal from this review from the respondents. Because there were no requests for review from other interested parties, we are terminating this review in accordance with 19 CFR 353.22(a)(5).

This termination notice is in accordance with 19 CFR 353.22(a)(5).

Dated: July 28, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–19033 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–029]

Fishnetting of Man-Made Fiber From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 2, 1993, the Department of Commerce published in the **Federal Register** the preliminary results of an administrative review of the antidumping finding on fishnetting of man-made fiber from Japan. The review covers shipments of two exporters to the United States during the period June 1, 1990, through May 31, 1991. Based on our analysis of comments received, the dumping margins for both companies have changed from the margins presented in the preliminary results.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Lisa Raisner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–3518.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 29467) the preliminary results of the administrative review of the antidumping finding (37 FR 11560, June 6, 1972) on fishnetting of man-made fiber from Japan. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of fishnetting of man-made fibers, not including salmon gill netting, from Japan. The merchandise is currently classified under item numbers 5608.11.00, 5608.19.10, and 5608.90.10 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and customs

purposes. The written product description remains dispositive.

This review covers entries of the subject merchandise by Momoi Fishing Net Manufacturing Company, Ltd. (Momoi), and Nippon Kenmo Company, Ltd. (Kenmo), during the period from June 1, 1990, through May 31, 1991.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Cordage Institute (CI), the successors in interest to the American Cordage and Netting Manufacturers, the petitioner, and one respondent, Momoi. We rejected Momoi's case brief because it was untimely filed. Momoi filed a timely rebuttal brief which included comments beyond the scope of CI's case brief; we have not addressed comments which were beyond the proper scope of rebuttal. Kenmo did not comment on the preliminary results.

Comment 1: CI contends that it is not clear how the Department treated home market interest expenses associated with in-warehouse or on-dock production; nor is it clear whether all credit expenses associated with sales to the United States were included in the Department's preliminary results.

Momoi states that there is no interest cost on in-warehouse or on-dock production in Japan. Momoi also contends that it did not incur credit costs on sales to the United States.

Department's Position: Based on the information in CI's comment, in-warehouse and on-dock production interest expenses appear to be part of the production process. Since no allegation of sales below cost has been made, we did not conduct a sales-below-cost investigation. Such costs are not part of our price-to-price comparison and are therefore not relevant in this review.

Regarding credit expense, however, the Department considers the time period between shipment and payment a credit expense. Because Momoi did not provide an amount for this expense, we have imputed one and followed our standard practice of subtracting home market credit expense from home market price and adding U.S. credit expense.

Comment 2: CI contends that it is unable to locate in the Department's calculations any adjustment for differences between Japanese and U.S. packing costs. Specifically, CI asserts that packing expenses for sale to the United States should include cost for marking, labelling, and protective packaging.

Momoi notes that all differences between Japanese and U.S. market packing costs were reported in its questionnaire response.

Department's Position: Although Momoi reported packing expenses for both market and U.S. sales in its questionnaire response, it failed to report such expenses on its computer tape, and, therefore, our calculations did not reflect Momoi's reported packing expenses for our preliminary results. Although it is not our burden to locate and apply information missing from the required computer tape, because packing expenses were reported as the same rate per pound for all shipments listed, for these final results we have subtracted Momoi's reported home market packing expenses from foreign market value and added U.S. packing expense. We did not add packing expense to U.S. price since it is already included.

Comment 3: CI states that the Department's calculation methodology does not include deductions for manufacturing costs, namely, waste and scrap and selvedge removal. Momoi replies that waste and scrap losses are reported in its questionnaire response, and that there is no selvedge created in its production of fishnetting and, accordingly, there are no selvedge expenses to report.

Department's Position: These items, waste and scrap and selvedge removal, are associated with costs of production. Since no allegation of sales below cost has been made, we did not conduct a sales-below-cost investigation. Such costs are not part of our price-to-price comparison and are therefore not relevant in this review.

Comment 4: CI contends that if Momoi's nylon mono-netting is single strand monofilament, there should be a discernible cost difference between single strand monofilament and multifilament bundles.

Momoi agrees that there is a cost difference between single strand monofilament and multifilament bundles, but states that the decision in the Department's preliminary results to match monofilament netting with monofilament netting, and multifilament netting with multifilament netting, was appropriate.

Department's Position: We agree with Momoi that the model-match methodology we used in our preliminary results is appropriate. Before issuance of our preliminary results, we solicited comments on product matches from both CI and Momoi. Both CI and Momoi agreed on the basic criteria for model matching, but differed as to how strict the comparison should be. Based on these comments, as well as model-matching criteria established in previous reviews of this finding, we agree with Momoi's proposed model matches, which result in identical merchandise comparisons. Therefore, no adjustments to foreign market value for differences in physical characteristics were necessary.

Comment 5: CI contends that no deductions from U.S. price were made for U.S. brokerage, wharfage, or storage. Momoi states that all sales to the United States have terms of cost, insurance, and freight (CIF) destination.

Department's Position: In our preliminary results we deducted brokerage from U.S. price. However we did not make deductions for wharfage or storage, as Momoi is on record claiming that it did not incur such expenses. Because there is no information on the record to suggest that such expenses were incurred but not reported by Momoi, in our final results we have not made a deduction for wharfage or storage, but have deducted brokerage expense for U.S. price.

Comment 6: CI contends that most U.S. prices in the market place for netting of man-made fibers from Japan include regular U.S. Customs duties. CI asks the Department to confirm that these duties, if they have in fact been included, have been deducted in the dumping analysis.

Department's Position: In our questionnaire, we requested that Momoi identify costs for regular U.S. Customs duties. We cannot determine from Momo's response that any claimed charges include an amount for regular U.S. Customs duties applicable to this merchandise. In addition, Momoi did not address this issue in its rebuttal comments. Therefore, in absence of this information, we have referred to information from U.S. Customs as a reasonable basis for this adjustment. Accordingly, for these final results we have deducted 17 percent regular U.S. Customs duties from U.S. price.

Comment 7: CI contends that it was appropriate for the Department to use in its preliminary results the highest available margin for the firm which did not respond to the Department's questionnaire.

Department's Position: We agree, in part, with CI. Because it did not respond to our questionnaire, Kenmo was deemed uncooperative. In accordance with section 776(c) of the Tariff Act, we have used best information otherwise available (BIA). We note that the rate assigned to Kenmo in our preliminary results did not follow our BIA hierarchy, as outlined in Antifriction Bearings (Other than Tapered Roller

Bearings) and Parts from France, et al. (57 FR 28379, June 24, 1992), because it was from the preliminary results, not the final results of a previous administrative review. The correct BIA rate, which is the highest of the rates found for any firm in the final results of a prior administrative review, has been applied in these final results (see Fishnetting of Man-Made Fibers from Japan; Final Results of Administrative Review of Antidumping Finding, 48 FR 43210, September 22, 1983).

Comment 8: CI contends that circumvention by certain unidentified manufacturers is occurring via manufacturing operations in Mexico.

Momoi contends that CI failed to meet the conditions necessary for the Department to initiate an anticircumvention inquiry. Specifically, CI has not demonstrated that the difference between the value of the merchandise sold in the United States is minimal as compared to the value of merchandise subject to the antidumping finding which is completed or assembled in another foreign country. Accordingly, Momoi asserts CI's allegation should be ignored.

Department's Position: The allegation that CI makes does not contain adequate information for us to initiate an anticircumvention inquiry. In addition, CI does not tie the identities of the two companies covered by the current review to the alleged circumvention activity, nor is there any reference to the period of this administrative review. If there is further concern on the part of interested parties, they should make an appropriately documented request for an anticircumvention inquiry.

Final Results of the Review

After analysis of the comments received, we determine that the following weighted-average margins exist for the period June 1, 1990, through May 31, 1991:

Manufacturer/producer/exporter	Percent margin
Momoi Fishing Net Mfg.	2.67
Nippon Kenmo Co.	18.30

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentages stated above. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the "new shipper" rate established in the first administrative review, as discussed below.

On May 25, 1993, the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once on "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction for clerical errors or as a result of litigation), in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of the administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of the review will be 1.94 percent, the "new shipper" rate established in the first final results of the administrative review published by the Department (47 FR 28978, July 2, 1982).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 30, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19031 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–813]

Preliminary Results of Antidumping Duty Administrative Reviews; Light-Scattering Instruments and Parts Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews: light-scattering instruments and parts thereof from Japan.

SUMMARY: In response to requests from the petitioner, Wyatt Technology Corporation (Wyatt), the Department of Commerce (the Department) is conducting the first and second administrative reviews of the antidumping duty order on light-scattering instruments (LSIs) and parts thereof from Japan. The reviews cover one manufacturer/exporter, Otsuka Electronics Co., Ltd. (Otsuka), and entries of the subject merchandise to the

United States during the period November 15, 1990 through October 31, 1992. As a result of these reviews, the Department has preliminarily determined that there were no entries of LSIs exported by Otsuka and sold to unrelated parties during the first administrative review period. The Department has also preliminarily determined, using the best information available, (BIA), that dumping margins exist with respect to Otsuka for the second review period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1990, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on light scattering instruments (LSIs) from Japan (55 FR 48144). Petitioner, Wyatt, requested the first administrative review of this order on November 21, 1991, and the second administrative review on November 27, 1992. We initiated both reviews, covering the periods July 10, 1990 through October 31, 1991 (56 FR 66429, December 23, 1991), and November 1, 1991 through October 31, 1992 (57 FR 61873, December 29, 1992), respectively. The Department has now conducted the reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On June 4, 1992, Otsuka claimed that the Department had incorrectly identified the beginning date of the first period of review (POR) as July 10, 1990. Otsuka believes that the POR should begin on November 15, 1990, because suspension of liquidation became effective on that date. We agreed to change to November 15, 1990, the beginning date of the first administrative review period, consistent with 19 CFR 353.22(b)(2).

On April 21, 1993, we granted Otsuka a two-week extension for submitting its questionnaire response in the second review, in accordance with 19 CFR 353.31(b)(3). We received Otsuka's questionnaire response 12 days after the extended deadline of May 6, 1993. We rejected the response as untimely, in accordance with 19 CFR 353.31(b)(2), and used BIA for purposes of the second review, in accordance with section 776(c) of the Act.

Scope of the Reviews

These reviews cover imports of LSIs and parts thereof from Japan. The Department defines such merchandise as LSIs and the parts thereof from Japan, specified below, that have classical measurement capabilities, whether or not also capable of dynamic measurements. Classical measurement (also known as static measurement) capability usually means the ability to measure absolutely (i.e., without reference to molecular standards) the weight and size of macromolecules and submicron particles in solution, as well as certain molecular interaction parameters, such as the so-called second viral coefficient. (An instrument that uses single-angle instead of multi-angle measurement can only measure molecular weight and the second viral coefficient.) Dynamic measurement (also known as quasi-elastic measurement) capability refers to the ability to measure the diffusion coefficient of molecules or particles in suspension and deduce therefrom features of their size and size distribution. LSIs subject to these reviews employ laser light and may use either the single-angle or multi-angle technique.

The following parts are included in the scope of these administrative reviews when they are manufactured according to specifications and operational requirements for use only in an LSI as defined in the preceding paragraph: Scanning photomultiplier assemblies, immersion baths (to provide temperature stability and/or refractive index matching), sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches. LSIs subject to these reviews may be sold inclusive or exclusive of accessories such as personal computers, cathode ray tube displays, software, or printers. LSIs are currently classifiable under Harmonized Tariff Schedule (HTS) subheading 9027.30.40. LSI parts are currently classifiable under HTS subheading 9027.90.40. HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written product description remains dispositive. Different items with the same name as subject parts may enter under subheading 9027.90.40. To avoid the unintended suspension of liquidation of non-subject parts, those items entered under subheading 9027.90.40 and generally known as scanning photomultiplier assemblies, immersion baths, sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches must be accompanied by an importer's declaration to the Customs Service to the effect that they are not manufactured for use in a subject LSI.

These reviews cover entries of the subject merchandise exported by Otsuka and entered during the periods November 15, 1990 through October 31, 1991, and November 1, 1991 through October 31, 1992.

Preliminary Results of Reviews

We have preliminarily determined that Otsuka had no exports of the subject merchandise, entered into the United States and sold to unrelated parties during the first administrative review period, November 15, 1990 through October 31, 1991. Otsuka exported one subject LSI during this period to a related party in the United States. The related party has not sold the LSI. We will include this unit in a future review if it is ever sold.

Otsuka also exported two high-speed correlation calculation boards (correlation boards) that entered during the POR, one for sale, and one for demonstration use. In accordance with 19 CFR 353.29(i)(1), we preliminarily determine that these parts are not covered by the scope of the order. It is clear from the final determination of the LTFV investigation that the correlation boards are not covered because they are not manufactured exclusively for use with subject LSIs, as is required. The correlation boards in question can be used with at least one model of LSI that is outside the scope. In this regard, Otsuka itself manufactures a model of LSI that is capable of performing dynamic measurements, but not classical measurements, and is therefore outside the scope. Because the correlation boards can be used with LSIs like this model, which has dynamic measuring capabilities but not classical measuring capabilities, they can be used in LSIS that are outside the scope of the order. Accordingly, the correlation boards are not manufactured exclusively for use in the subject merchandise, and we preliminarily determine that the correlation boards are not within the scope.

Because Otsuka failed to respond in a timely manner to our antidumping request for information in the second administrative review, we are using BIA, in accordance with section 776(c) of the Act, for that period. In this case, we have used as BIA the rate from the

antidumping order. Consequently, we have preliminarily determined that the following dumping margins exist for the periods November 15, 1990 through October 31, 1991, and November 1, 1991 through October 31, 1992:

Manufacturer/Exporter	Period of review	Margin (percent)
Otsuka Electronics, Ltd	11/15/90–10/31/91	[1]129.71
Otsuka Electronics, Ltd	11/01/91–10/31/92	[2]129.71

[1] No entries during this period; margin used is from the investigation.
[2] BIA rate; margin used is from the investigation.

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of these administrative reviews, which will include the results of its analysis of issues raised in any such case briefs or hearing.

The following deposit requirements shall be effective for all shipments of the subject merchandise that are entered or withdrawn from warehouse for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company shall be the rates established in the final results of the administrative review for the 1991–1992 period; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the "all others rate" from the LTFV investigation.

On May 25, 1993, the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 129.71 percent, the "all other" rate established in the final notice of LTFV investigation by the Department (55 FR 34952, August 27, 1990).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: July 30, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19034 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–810]

Final Determination; Antidumping Duty Investigation of Pads for Woodwind Instrument Keys From Italy Manufactured by Music Center s.n.c. di Luciano Pisoni and Lucien s.n.c. di Danilo Pisoni & C.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–3464.

Final Determination

We have determined that pads for woodwind instrument keys manufactured by Music Center s.n.c. di Luciano Pisoni (Pisoni) and Lucien s.n.c. di Danilo Pisoni & C. (Lucien) (collectively respondent) from Italy are being, or are 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). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the affirmative preliminary determination on May 25, 1993 (58 FR 30015), the following events have occurred. Respondent requested a public hearing on May 25, 1993. On June 4, 1993, petitioner requested to participate in the public hearing.

We conducted verification on June 7 through June 9, 1993. Petitioner filed its case brief on July 12, 1993. Also on July 12, 1993, respondent notified the Department of Commerce (the Department) that it would not be submitting a case brief. A public hearing was held on July 19, 1993.

Scope of Investigation

The products covered by this investigation are pads for woodwind instrument keys (pads), which are manufactured by Pisoni and Lucien.

Pads for woodwind instrument keys covered by the scope of this investigation are currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 9209.99.4040 and 9209.99.4080. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is April 1, 1992, through September 30, 1992.

Such or Similar Comparisons

We have determined that the products covered by this investigation comprise a single category of "such or similar" merchandise. Where there were no sales of identical merchandise in the third country to compare to U.S. sales, we made similar merchandise comparisons on the basis of: Diameter, type of material, pad variety, type of core, type of disk, and thickness, as listed in Appendix V of the Department's antidumping questionnaire. We compared sets of pads sold in the U.S. market to sets of pads sold in the third country market, and compared individual pads to individual pads. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of pads from Italy to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based all USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on f.o.b sales to unrelated customers. We made one addition to USP for payments respondent received from respondent's distributor in the U.S. market for exchange rate fluctuations. We recalculated this adjustment based on the terms specified in the price protection agreement between respondent and its distributor. We made no adjustment for reported quantity discounts because the prices reported were already net of discounts. Also, we did not deduct reported expenses for air freight charges because the prices respondent reported were ex-factory prices which did not include any expenses associated with air freight.

We discovered at verification that respondent did not report certain sales of pads made with cork. Therefore, we have used as best information available (BIA) for the U.S. sales of cork pads the highest rate calculated for any other sale of the subject merchandise, as this rate was determined to be non-aberational (see comment #3 in the "Analysis of Comments Received" section of this notice).

Foreign Market Value

We calculated FMV based on f.o.b. and c&f prices to unrelated customers in Taiwan because the home market was not viable. Where possible, we compared U.S. sales to third country sales of identical and similar merchandise made at the same level of trade, in accordance with 19 CFR 353.58. We made deductions, where appropriate, for freight expenses incurred on c&f sales. We made no adjustment for reported quantity discounts because the prices reported were already net of discounts.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses. Since respondent used an inconsistent methodology for calculating the credit period for U.S. and third country sales, we have added to every U.S. credit period the longest period between the date the bank receives the funds and the date the company receives the funds in either the U.S. or Taiwanese markets, as BIA (see comment #5 in the "Analysis of Comments Received" section of this notice). Since we are collapsing Pisoni and Lucien into one entity for purposes of this investigation, as stated in our preliminary determination (58 FR 30015, May 25, 1993), we have recalculated credit expenses using the average interest rate for Pisoni and Lucien.

We did not make a circumstance of sale adjustment for reported direct selling expenses because the expenses were not properly supported on the record, and it is not clear who incurs these reported expenses. Also, it is unclear how respondent derived the percentage factor it applied to USP to calculate these reported expenses. In two deficiency letters, we requested that respondent submit documents showing how this adjustment was calculated, but respondent did not do so. Respondent's narrative description only states that its direct selling expenses for products sold in the U.S. market are less than its expenses for products sold in the home market, and therefore, we should adjust upward the U.S. price by the amount of this difference.

Moreover, at verification, respondent declined to present any documentation supporting these expenses and stated that it was no longer claiming that a circumstance of sale adjustment should be made for them. In addition, respondent did not provide any information with respect to selling expenses incurred for products sold in third countries. Since we are using Taiwan sales as a basis for FMV and the reported expenses are not properly supported on the record, we have not made a circumstance of sale adjustment for reported direct selling expenses (see comment #9 in the "Analysis of Comments Received" section of this notice).

In reporting its physical differences in merchandise (difmer) adjustment, respondent incorrectly included amounts for packing. Because of this, as BIA we have denied respondent's claimed adjustment when it results in a decrease to the FMV (see comment #1 in the "Analysis of Comments Received" section of this notice). Where the difmer results in an increase to FMV, as BIA we made the adjustment.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Analysis of Comments Received

Comment 1: Petitioner argues that the respondent omitted from the Japanese database a number of products based on the difmer adjustment, which was contrary to the Department's instructions to report all sales to Japan, regardless of the difmer adjustment. Petitioner contends that, based on the limited information gained at verification, respondent incorrectly calculated the difmer adjustment using packing charges. Thus, petitioner argues that numerous sales excluded by respondent from the Japanese database based on the difmer test should have been included and that the inclusion of these sales could have caused the Department to select Japan as the appropriate third country market.

DOC Position: We disagree with petitioner's assertion that the Department would have used sales to Japan as the basis for foreign market value if certain products from this

database had not been deleted by respondent. As stated in the preliminary determination (58 FR 30015, May 25, 1993), the Department selected Taiwan as the third country market because exports to Taiwan consisted of sales of the most similar merchandise and in the largest quantities. Although petitioner is correct in stating that respondent did not report all individual sales in the Japanese database, this issue is moot since we selected the Taiwanese market as the appropriate basis for FMV based on a review of the total amount of Taiwanese and Japanese sales, including those Japanese sales which were excluded from the Japanese database. These sales totals were also confirmed at the verification.

Regarding Taiwanese sales, we agree that these sales also incorrectly include packing charges in the difmer adjustment. We determined that the difmer adjustment included packing charges at the verification. The Department's policy is to calculate the difmer adjustment based on the variable cost of manufacture only, as indicated in the Department's questionnaire. Packing costs are not considered variable costs of manufacture and, therefore, should not be included in the difmer adjustment. Any differences in packing costs are recognized by adding the cost of U.S. packing to FMV, as required by section 773(a)(1) of the Act. Respondent made no arguments why packing should be included in the difmer adjustment in the course of the investigation. Furthermore, respondent did not provide the data in a manner that would allow us to remove the packing costs from the difmer adjustment. Therefore, as BIA, we have denied respondent's claimed difmer adjustment when it results in a decrease in FMV.

Comment 2: Petitioner argues that the proper date of sale should be the date when the price and quantity are agreed to, which in this case, petitioner claims, is the date of the purchase order. (Respondent used date of the invoice to determine date of sale.) Petitioner maintains that, because respondents were unable to provide any purchase orders at verification, the Department should reject respondent's sales information and, instead, use BIA.

DOC Position: We disagree with petitioner. In our preliminary determination, we stated that the invoice date appears to be the date when the price and quantity are fixed. This topic was examined closely at the verification, where the Department found no evidence that the respondent ever officially confirms orders upon receipt of the purchase order. Instead, we found that the first written documentation that could be considered to be an order confirmation is the invoice, which is produced upon shipment. Therefore, we believe that the date of sale methodology utilized by respondent in this case is reasonable.

Comment 3: Petitioner contends that respondent failed to report sales of pads made with cork which were discovered at verification, even though it was instructed to report these sales.

DOC Position: We agree with petitioner. Our scope states that: "The products covered by this investigation are pads for woodwind instrument keys." Pads made with cork are included in the scope since the scope clearly includes pads for woodwind instrument keys regardless of material. Respondent failed to report sales of pads made with cork. Therefore, the Department used as BIA for these sales the highest rate calculated for any other sale of the subject merchandise, as this rate was determined to be non-aberational.

Comment 4: Petitioner argues that unreported bank charges were discovered during verification. Thus, petitioner states that the Department has incomplete and unreliable information to base the final determination and should therefore use petitioner's information as BIA to calculate a margin. If this is not done, petitioner argues that the Department should deduct the highest bank charge noted at verification from all sales in the U.S. market when calculating a margin.

DOC Position: We agree, in part, with petitioner. We found at verification that respondent incurred certain banking charges and should have reported them as direct selling expenses, as requested in the questionnaire. Therefore, as BIA, we have: (1) Calculated bank charges for U.S. sales, based on the highest percentage of the bank charge found on payments for U.S. sales; (2) calculated no bank charges for Taiwan sales; and (3) performed a circumstance of sale adjustment for the bank charges.

Comment 5: Petitioner asserts that the circumstance of sale adjustment for credit expenses should be disallowed because the methodology used to calculate the number of days of payment was inconsistent between U.S. sales and the third country sales. Petitioner contends as BIA, the Department should use the longest reported payment period for all U.S. sales.

DOC Position: We agree with petitioner. The Department's policy for calculating the credit period is to take the difference between the date of shipment and the date the company receives payment. Based on information obtained at the verification, the methodologies between the U.S. and Taiwanese credit periods were found to be inconsistent. For U.S. sales, respondent calculated the payment period as the number of days between the date of shipment and the date the bank received payment from the customer; for Taiwan sales, it used the period between the date of shipment and the date the bank deposited the funds in respondent's bank account. As a result, the U.S. credit period was under-reported. Therefore, as BIA, we have added to every U.S. credit period the longest period found at verification, for either Taiwan or U.S. sales, between the date the bank received the funds and the date it deposited them in the respondent's account.

Comment 6: Petitioner maintains that the Department should deny respondent's attempt to revise at verification the interest rate it used to impute credit expenses, since it was unable to substantiate the revised rate.

DOC Position: We agree with petitioner. In its response, respondent had used all short-term borrowings to calculate the interest rate. At verification, respondent then attempted to revise its interest rate calculation by only including dollar-denominated short-term borrowings. However, we are not accepting this new rate since: (1) It is untimely; and (2) as described in the verification report, respondent could not substantiate the revised interest rate as they were unable to support interest paid on dollar-denominated loans. We have therefore used the rate reported in the questionnaire response and used in the preliminary determination.

Comment 7: Petitioner argues that the range adjustment cited by the respondent is not required because the difmer adjustment should capture the difference in physical characteristics. Petitioner requests that the Department use BIA in calculating the difmer adjustment since respondent failed to report all costs associated with different pad sizes and to delete the range adjustment.

DOC Position: The range adjustment only applies to Japanese sales. Because we are not basing foreign market value on sales to Japan, this issue is moot.

Comment 8: Petitioner maintains that since respondent did not provide information regarding inland freight on sales made to the United States, the Department should use BIA for this adjustment.

DOC Position: We disagree with petitioner. Based on information submitted on the record in the course of this investigation, as well as information

obtained at the verification, we have determined that respondent did not incur any inland freight on sales made to the United States. Therefore, we made no deduction to USP for U.S. inland freight charges.

Comment 9: Petitioner contends that since the respondent did not provide an explanation and supporting documentation for an upward adjustment to USP which respondent had classified as a direct selling expense, the Department should use BIA for this adjustment.

DOC Position: We disagree with petitioner that an adjustment should be made. As stated in our preliminary determination, this adjustment was not properly supported on the record, and it was not clear who incurred this expense. This item was also examined at the verification. At the verification, company officials stated that they were withdrawing their claim for this adjustment, had no documentation to support it, and did not know what they had used to calculate it. Departmental officials checked to make sure that any selling expenses incurred had been reported and found no discrepancies. Therefore, we are not making any adjustment for this item.

Comment 10: Petitioner argues that, even though no documentation was found at verification supporting a relationship between Pisoni or Lucien and Enzo Pizzi (the U.S. distributor) (Pizzi), Pizzi is a selling agent of Pisoni, and that the transactions between Pisoni and Pizzi are exporters' sales price transactions.

DOC Position: We disagree with petitioner. We informed petitioner on July 7, 1993, that we had found at verification no evidence of a relationship between the parties nor any evidence that Pizzi acted as a selling agent of Pisoni, and that we would not conduct a verification of Pizzi. Therefore, we are continuing to treat Pizzi as one of respondent's unrelated U.S. customers.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist, with respect to imports of pads from Italy. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of 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. Since there is currently an antidumping duty order in effect with respect to imports of pads from Italy (other than those from Lucien and Pisoni), we find that there is a history of dumping in the United States of merchandise which is the subject of this investigation.

However, based on our analysis of the shipment data submitted by respondent, we have determined that massive imports do not exist. As stated in 19 CFR 353.16(f), we consider imports to be massive if there has been an increase in imports of 15 percent or more over a relatively short period of time. A comparison of respondent's shipments from April 1992 through October 1992 and those from November 1992 through May 1993, indicate that imports have increased by less than 15 percent. As such, we have determined that critical circumstances do not exist.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pads from Italy from Pisoni and Lucien, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after May 25, 1993, which is the date of publication of our preliminary determination in the **Federal Register**. There is no "All Others" rate in this investigation since the Department limited this investigation to Pisoni and Lucien, as an antidumping duty order currently exists with respect to exports of pads from all other companies in Italy. (See Pads for Woodwind Instrument Keys from Italy: Antidumping Duty Order, 49 FR 37137, September 21, 1984). This suspension of liquidation and the estimated margin shown below apply only to Pisoni and Lucien.

For previously reviewed or investigated companies, other than Pisoni and Lucien, the cash deposit rate will continue to be the company-specific rate published for the most recent review period. (See Pads for Woodwind Instrument Keys from Italy: Final Results of Antidumping Duty Administrative Review, 57 FR 48202, October 22, 1992). For unreviewed or non-investigated companies, the cash deposit rate will continue to be the all other rate published in this review period, (57 FR 48202, October 22, 1992).

For Pisoni and Lucien, the Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margin for Pisoni and Lucien is 1.82 percent.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our determination. The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess and antidumping duty on pads from Italy entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

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).

Dated: August 2, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19027 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–501]

Photo Albums and Filler Pages From Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 20, 1992, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on photo albums and filler pages from Korea. The

review covers one exporter and the period December 1, 1990 through November 30, 1991. We preliminarily found that there were no shipments by that exporter of Korean photo albums and filler pages to the United States during the period of review.

We gave interested parties an opportunity to comment on our preliminary results. We received one comment from respondent. Based on our analysis of the comment received, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0090/3814.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1992, the Department published in the **Federal Register** (57 FR 47838) the preliminary results of its administrative review of the antidumping duty order on photo albums and filler pages from Korea (December 16, 1985, 50 FR 51273). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of photo albums and filler pages. This merchandise is currently classifiable under item numbers 3920, 3921, 4819.50, 4820.50, 4820.90 and 4823.90 of the Harmonized Tariff Schedule (HTS). HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers Four Star Trading Company and the period December 1, 1990 through November 30, 1991.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by 19 CFR 353.22(c)(5). We received one comment from Four Star.

Comment: Four Star requests that the Department remove its name from a list of companies deemed to be possible exporters of Korean photo albums and filler pages when the Department issues instructions to the U.S. Customs Service (Customs) regarding the final results of this administrative review.

Department's Position: As a result of a previous administrative review, the Department notified customs that Four Star had been identified by the petitioner as a possible exporter of Korean photo albums and filler pages and that liquidation should be suspended on all entries of merchandise exported by Four Star regardless of country of origin. During the period of review, Customs suspended liquidation of an entry of this merchandise exported by Four Star. However, after review of Four Star's information, the Department agrees with Four Star that this entry was of Taiwanese origin, and therefore, not subject to the antidumping duty order on photo albums and filler pages from Korea. Upon completion of this administration review, the Department will instruct Customs that the above-referenced entry of photo albums and filler pages made by Four Star is not subject to the antidumping duty order with regard to Korea. However, the fact that this one entry was not of Korean origin does not eliminate the previously established possibility that other photo albums and filler pages exported by Four Star may be of Korean origin. Therefore the Department will instruct Customs to continue to suspend liquidation on entries of all photo albums and filler pages, exported by Four Star (54 FR 46963, November 8, 1989).

Final Results of Review

After analysis of the data and the comment received, we determine that there were no shipments of Korean photo albums and filler pages from Four Star to the United States during the period December 1, 1990 through November 30, 1991. Therefore, because there were no sales to analyze, we are continuing to apply the deposit rate established in the final results of the last administrative review, 64.81 percent.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will continue to be 64.81 percent as established in the final results of the last administrative review; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, any prior review, or the original less-than-fair-value investigation, but the manufacturer is, the case deposit rate will be the rate established for the most recent period for the manufacturer of this merchandise. In accord with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, the cash deposit rate for all other manufacturers or exporters will be 8.37 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation. This administration review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 29, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19030 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–M

University of California, Irvine, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign

instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–043. *Applicant:* University of California, Irvine, Irvine, CA 92717-3100. *Instrument:* Isotope Ratio Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan Corporation, Germany. *Intended Use:* See notice at 58 FR 31509, June 3, 1993. *Reasons:* The foreign instrument provides: (1) an internal precision of 0.005 per mil for 3 bar µl samples of CO_2, (2) a six-cup multicollector array for simultaneous collection of three ion beams and (3) all-metal inlet valves.

Docket Number: 93–045. *Applicant:* University of Rhode Island, Kingston, RI 02881. *Instrument:* Gas Source Isotope Ratio Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 58 FR 31509, June 3, 1993. *Reasons:* The foreign instrument provides: (1) an internal precision of 0.008 per mil for 70 bar µl samples of N_2, (2) a six-cup collector array and (3) an all metal inlet system.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–19005 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[I.D. 073093D]

South Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on August 23–27, 1993, at the Town and County Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–1000.

On August 23 from 1:30 p.m. until 5 p.m., the Council's Habitat and Environmental Protection Committee is scheduled to review various options for management of the live rock fishery.

On August 24 from 8:30 a.m. until 12 p.m., the Standard Operating Practices and Procedures Committee is scheduled to discuss the Council member conflict-of-interest issue and begin developing language to address the issue for inclusion in the Council's operating procedures.

Also on August 24 from 1:30 p.m. until 5 p.m., and on August 25 from 8:30 a.m. until 5 p.m., the Snapper-Grouper Committee will review public hearing and agency comments on Amendment #6 to the Snapper-Grouper Fishery Management Plan before taking action to finalize the amendment. After making appropriate changes, the committee is scheduled to approve the amendment for submission to the full council on August 26.

On August 26 from 8:30 a.m. until 5 p.m. and on August 27 from 8:30 a.m. until 12 p.m., the full Council will meet to receive Committee reports. A public hearing is scheduled on August 26 at 9 a.m., prior to the Council taking final action on Amendment #6. A detailed agenda with specific meeting times will be available on August 5.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407; telephone: (803) 571–4366.

Dated: August 2, 1993.

David S. Crestin,

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

[FR Doc. 93–18962 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–22–P–M

Marine Mammals

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

ACTION: Issuance of modification of Permit No. 813 (P523C).

SUMMARY: Notice is hereby given that on August 2, 1993, Permit No. 813, issued to Mr. Adam Frankel, University of Hawaii at Manoa, Department of Oceanography, 1000 Pope Road, Honolulu, Hawaii 96822, on February 1, 1993 (58 FR 7548), was modified to extend its duration through September 30, 1994.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/712–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396.

SUPPLEMENTARY INFORMATION: The subject modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Dated: August 2, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–18916 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Silk Blend Textile Products Produced or Manufactured in China

August 3, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 3, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

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 current limit for Category 335 is being increased by application of swing, reducing the limit for Category 846 to account for the increase.

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 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 3, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 3, 1993, you are directed to amend further the directive dated December 23, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
335	379,028 dozen.
846	141,504 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–19026 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISION

Petition Requesting Issuance of Flammability Standard for Upholstered Furniture

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The National Association of State Fire Marshals has petitioned the Commission to issue a flammability standard for upholstered furniture under provisions of the Flammable Fabrics Act. The Commission solicits written comments concerning the petition from all interested parties.

DATES: Comments on the petition should be received in the Office of the Secretary by October 8, 1993.

ADDRESSES: Comments on the petition should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504-0800, and should be captioned "Petition FP 93-1 for Issuance of Flammability Standard for Upholstered Furniture." Copies of the petition are available by writing or calling the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Sheldon D. Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0800.

SUPPLEMENTAL INFORMATION: The Commission has docketed correspondence from the National Association of State Fire Marshals requesting issuance of a flammability standard for upholstered furniture as Petition FP 93-1 for rulemaking under provisions of the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*)

The petition requests issuance of a flammability standard to reduce risks of deaths and injuries associated with cigarette-ignited fires involving upholstered furniture. The petition describes the substance of the requested standard as the requirements of Technical Bulletins 117 and 133 issued by the Bureau of Home Furnishings and Thermal Insulation of the State of California. The petition includes copies of those documents and the text of California statutes and regulations which make their requirements applicable to specified products of upholstered furniture and component materials used to manufacture upholstered furniture.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0800. A copy of the petition is available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 420, 5401 Westbard Avenue, Bethesda, Maryland.

Dated: August 3, 1993.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93–18886 Filed 8–6–93; 8:45 am]

BILLING CODE 6355–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Technology Transfer Working Group

AGENCY: Director, Defense Research and Engineering.

ACTION: Solicitation of inputs for defense technology transfer.

The Defense Technology Transfer Working Group (DTTWG) has been constituted to prepare a Congressional report required by Section 4224, entitled "Encouragement of Technology Transfer" of the National Defense Authorization Act for Fiscal Year 1993. This working group chaired by DDR&E has been established to: (1) Identify the technology transfer activities and accomplishments that are currently under way, (2) assess core competencies of major DoD laboratories in dual-use technologies; (3) investigate existing barriers to more effective technology transfer; and (4) provide recommendations on how to streamline the process. The working group includes representatives of the Military Departments, Defense Nuclear Agency, Advanced Research Projects Agency, and Ballistic Missile Defense Organization.

Inputs are welcomed from other Federal agencies, State and local governments, colleges and universities, private individuals, and industry, particularly constructive comments concerning any of the points listed above. The working group needs inputs regarding those aspects of DoD technology transfer which work well today, and recommendations for improvement.

The Defense Nuclear Agency has agreed to serve as the point-of-contact for receipt of industry comments. Please provide inputs by 30 August 1993 to: Defense Nuclear Agency; Attn: Dr. C. Stuart Kelley, OTA/DTT; 6801 Telegraph Road, Alexandria, VA 22310–3398.

Dated: August 4, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–18941 Filed 8–6–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and Applicable OMB Control Number: Defense Federal Acquisition Regulation Supplement, Part 228, Bonds and Insurance, and the clause at 252.228–7005; OMB Control No. 0704–0216.

Type of Request: Revision.

Average Burden per Response: 40 hours.

Responses per Respondent: 1.

Number of Respondents: 21.

Annual Burden Hours: 840.

Annual Responses: 21.

Needs and Uses: The clause at 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles and Space Launch Vehicles, requires defense contractors to promptly provide to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile or space launch vehicle being manufactured, modified or overhauled.

Affected Public: Businesses or other for-profit and small Businesses or organizations.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia, 22202–4302.

Dated: August 3, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–18898 Filed 8–6–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and OMB Control Number: Application for Uniformed Services Identification Card—DEERS Enrollment; DD Form 1171; OMB Control No. 0704–0020.

Type of Request: Epedited submission—Approval date requested: Not later than 30 days following publication in the **Federal Register.**

Number of Respondents: 2,125,000.

Responses per Respondent: 1.

Annual Responses: 2,125,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 354,167.

Needs and Uses: The Department of Defense provides members of the Uniformed Services, their eligible dependents, and other eligible individuals with a distinct identification card for use in identifying their status as active duty, reserve, or retired members, and as an authorization card for benefits of the Uniformed Services. The DD Form 1172 collects the pertinent information necessary to identify the applicant's status and eligibility, and is used as the application for issuance of the identification card.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: August 4, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–18940 Filed 8–6–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF); Notice of Initial meeting

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the initial meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF). The purpose of this meeting is to analyze what needs to be done to foster execution of the ARMS Initiative. All sessions will be open to the public.

DATES: August 10–12, 1993.

ADDRESSES: Holiday Inn, 5202 Brady Street, Davenport, Iowa 52806.

FOR FURTHER INFORMATION CONTACT: Mr. R. B. Auger, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333.

SUPPLEMENTARY INFORMATION: Reservations at the Holiday Inn Hotel may be made through the Protocol Office at Rock Island Arsenal; telephone (309) 782–5510/5583.

Dated: August 3, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–18897 Filed 8–6–93; 8:45 am]

BILLING CODE 5000–04–M

Privacy Act of 1974; Notice to Amend Systems of Records

AGENCY: Office of the Secretary of Defense.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of Defense (DOD) is amending the Retention and Disposal category of 13 systems of records notices to reflect the DOD policy for the retention of grievance and adverse action and performance-based action records. DOD policy is to maintain these records for four years and then destroy them.

DATES: This action will be effective August 9, 1993.

ADDRESSES: If you have any comments, send them to the Defense Privacy Office, 1941 Jefferson Davis Highway, Room 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 607–2943 or DSN 327–2943.

SUPPLEMENTARY INFORMATION: The Principal Director, Civilian Personnel Policy/EO, Office of the Assistant Secretary of Defense for Force Management and Personnel has decided that the Department of Defense will maintain grievance, adverse action and performance-based action records for four years. This action amends notices affected by this decision.

Dated: August 3, 1993.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0690–700DAPE

SYSTEM NAME:

Grievance Records *(February 22, 1993, 58 FR 10177).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records of appropriated fund employees are destroyed 7 years after closing of the case; those of non-appropriated fund employees are destroyed 5 years after closing. Disposal is by shredding.'

* * * * *

DOCHA 09

SYSTEM NAME:

Grievance Records *(February 22, 1993, 58 FR 10254).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are closed at the end of the calendar year in which they are closed, held an additional 4 years, and then destroyed.'

* * * * *

DODDS 21

SYSTEM NAME:

Department of Defense Dependents Schools (DODDS) Grievance Records *(February 22, 1993, 58 FR 10244).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'These records are disposed of four years after closing of the case. Disposal is by shredding or burning.'

* * * * *

DWHS P37

SYSTEM NAME:

Grievance and Unfair Labor Practices Records *(February 22, 1993, 58 FR 10276).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Case files are destroyed 4 years after case is closed.'

* * * * *

GNSA 09

SYSTEM NAME:

NSA/CSS Personnel File *(February 22, 1993, 58 FR 10539).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

After 'Computerized portion is purged and updated as appropriate.' add 'Records relating to adverse actions, grievances, excluding EEO complaints, and performance-based actions, except SF–50s, will be retained for four years.'

* * * * *

HDNA 02

SYSTEM NAME:

Employee Relations *(February 22, 1993, 58 FR 10549).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are destroyed four years after the close of each case or the separation of employee.'

* * * * *

K700.01

SYSTEM NAME:

Employee-Management Relations and Services Files *(February 22, 1993, 58 FR 10596).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are retained for four years and subsequently destroyed, except for blood donor records which are retained until the employee terminates his/her employment with DISA after which time they are destroyed.'

* * * * *

K700.17

SYSTEM NAME:

603–01 Official Personnel Folder Files (Standard Form 66) *(February 22, 1993, 58 FR 10606).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Add a new paragraph 'Administrative grievance, disciplinary and adverse action files are maintained for four years and then destroyed.'

* * * * *

N12771-1

SYSTEM NAME:

Employee Grievances, Discrimination Complaints, and Adverse Action Appeals *(February 22, 1993, 58 FR 10821).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Case files maintained for four years. Files are then sent to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 and maintained for an additional four years. EEOC decisions and index cards are retained indefinitely.'

* * * * *

RDCAA 358.3

SYSTEM NAME:

Grievance and Appeal Files *(February 22, 1993, 58 FR 10849).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Files are destroyed 4 years after the grievance has been decided or after the transfer of separation of the employee.'

* * * * *

S337.25 DLA–KS

SYSTEM NAME:

Employee Relations Under Negotiated Grievance Procedures *(February 22, 1993, 58 FR 10885).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are destroyed four years after case is closed.'

* * * * *

V4–07

SYSTEM NAME:

Adverse Actions, Grievance Files, and Administrative Appeals *(February 22, 1993, 58 FR 10909).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Adverse action files are destroyed four years after the case is closed. Grievance and administrative appeals files are destroyed four years after the case is closed. Destruction is accomplished by burning or shredding..'

* * * * *

WUSU07

SYSTEM NAME:

USUHS Grievance Records *(February 22, 1993, 58 FR 10927).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are disposed of four years after closing of the case. Disposal is by shredding or burning.'

* * * * *

[FR Doc. 93–18899 Filed 8–6–93; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF THE ARMY

Request for Nominations to the Inland Waterways Users Board

AGENCY: Assistant Secretary of the Army (Civil Works), DOD.

ACTION: Notice.

SUMMARY: Section 302 of Public Law (PL) 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its eleven members are appointed by the Secretary of the Army. This notice is to solicit nominations for six appointments or reappointments to a two-year terms that will begin January 1, 1994.

EFFECTIVE DATE: August 9, 1993.

ADDRESSES: Office of Assistant Secretary of the Army (Civil works), ATTN: Inland Waterways Users Board Nominations Committee, Washington, DC 20310–0103.

FOR FURTHER INFORMATION CONTACT: Dr. G. Edward Dickey, Acting Assistant Secretary of the Army (Civil Works), (703) 697–4671.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of board members are covered by provisions of section 302 of Public Law 99–662. The substance of those provision is as follows: *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracostal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463 as amended) and Departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable.

The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

Carriers and Shippers. The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

Geographical Representation. The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are: (1) The Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways. *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in *Waterborne Commerce of the United States.* In rank order they are: (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

Reflecting preceding selection criteria, the present representation by Board members is as follows: The six members whose terms expire December 31, 1993, include one shipper representative representing the Lower Mississippi River region (Region 2), and farm and food products; one shipper representative representing the East Gulf region, and coal; two carrier representatives representing the Ohio River (Region 3), and coal, farm and food products, petroleum, chemicals, minerals and metals; and two shipper/carrier representatives representing the Ohio River (Region 3), and coal. The five members whose terms expire December 31, 1994, include one shipper representative representing the Upper Mississippi River region (Region 1) and farm and food products, ethanol, and coal; one shipper representative representing the Lower Mississippi River region (Region 2), and farm and food products; one carrier representative representing the Gulf Intracoastal Waterway in Louisiana and Texas (Region 4), and petroleum and petroleum products; one carrier representative representing the Ohio River region (Region 3), and coal and coke, minerals, and metals, petroleum and petroleum products, farm and food products and chemicals; and, one carrier representative representing the

Columbia/Snake River system and Upper Willamette (Region 6), and farm and food products, petroleum products, chemicals, containers, and forest products.

Nominations to replace members whose terms will expire December 31, 1993, may be made by individuals, firms, or associations. Nominations should state the region to be represented and whether the nominee is to represent carriers or shippers. Information should be provided on the nominee's personal qualifications and the commercial operations of the carrier and/or shipper with whom the nominee is associated. The latter information should show the actual or estimated ton-miles of commodities carried or shipped on inland waterways in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice published July 16, 1992, have been retained for consideration for appointment along with nominations received in response to this **Federal Register** notice. Renomination is not required but may be desirable. Five of the six members whose terms expire December 31, 1993, are eligible for reappointment.

Deadline for Nominations: All nominations must be received at the address shown above no later than August 30, 1993.

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 93–18901 Filed 8–6–93; 8:45 am]

BILLING CODE 3710–92–M

Department of the Army

Intent To Grant an Exclusive License

AGENCY: U.S. Army Belvoir RD&E Center, DOD.

ACTION: Notice.

In compliance with 37 CFR 404.4 the Department of the Army hereby gives notice of its intent to grant to Sartomer Company, Incorporated, a U.S. corporation having its principal place of business at Oaklands Corporate Center, 468 Thomas Jones Way, Exton, PA 19341, an exclusive license under U.S. Patent No. 4,843,114 with designations in not only the United States but the foreign countries of Canada, United Kingdom, West Germany, Israel, Sweden, Korea, Australia, and Austria. This patent is for a "Rubber Compound for Tracked Vehicle Tank Pads". Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

DATES: Written comments/objections must be received not later than October 8, 1993.

ADDRESSES: Commander, U.S. Army Belvoir RD&E Center, ATTN: SATBE–HS (Karen Gordon), Fort Belvoir, VA 22060–5606.

FOR FURTHER INFORMATION CONTACT: Karen Gordon, (703) 704–2279.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–19016 Filed 8–6–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Medi-Train, Inc.; Intent to Grant Exclusive Patent License

AGENCY: Department of the Navy, DoD.

ACTION: Intent to Grant exclusive patent license; Medi-Train, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Medi-Train, Inc. a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent No. 4,932,880 entitled "Low-Cost Sound Related Trainer".

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code 1230), Ballston Tower One, Arlington, Virginia 22217–5660.

DATES: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (Code 1230), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–40001.

Dated: July 27, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–19020 Filed 8–6–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Financial Assistance: University of Alabama-Birmingham Cooperative Agreement

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office (DOE–ID), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a new start Cooperative Agreement Number DE–FC07–93ID13230 to the University of Albama-Birmingham (UAB). This project was originally proposed by Southern Research Institute (SRI) in response to a solicitation. The SRI proposal identified Dr. Charles Bates, who possessed the unique technical background and expertise to perform this work, as the Principal Investigator (PI). After the selection was made, Dr. Bates changed his employer from SRI to UAB. Since the PI was the major factor in selection of this award, SRI transferred the project to UAB. The UAB proposal was then submitted to DOE–ID and selected as a non-competitive award.

The objective of the work to be performed under this agreement is to provide funds to advance the state of the art in Expendable Pattern Casting (EPC) Technology Laboratory in order to improve the competitiveness of the U.S. metals casting industries. The proposed project will focus on developing and demonstrating advanced casting technology and on transferring the knowledge to program participants (including casting designers, foundry suppliers, equipment producers, producing foundries, and casting users). The Federal Domestic Catalog Number is 81.078, Industrial Energy Conservation.

FOR FURTHER INFORMATION CONTACT: Ginger L. Sandwina or Kathleen M. Stallman, U.S. Department of Energy, Idaho Field Office, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401–1562, (208) 526–8698 or (208) 526–7038 respectively.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is Public Law 101–425, Department of Energy Metal Casting Competitiveness Research Act of 1990. The proposal meets the criteria for "non-competitive" financial assistance as set forth in 10 CFR 600.7(b)(2)(i)(D). The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications. The anticipated total project period to be awarded is 24 months. The total cost of the agreement is $1,214,030 of which 55% is to be industrially cost-shared (cash and in-

kind contributions) through the American Foundrymen's Society (AFS).

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 93–18985 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Grant to Energy Concepts Company

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Intent.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14, it is making a financial assistance award to the Energy Concepts Company, Annapolis, Maryland, under the Grant Number DE–FG01–93CE15557. The purpose of the grant is to design, build, operate, and bench-test a 15-ton engineering prototype of the patented invention which modifies the generator-absorber heater-exchange (GAX) cycle which had been previously developed by the heat pump industry in cooperation with DOE. The overall objective of this effort is to prove that the additional heat exchanger in the branch of the GAX will permit operations at a higher heat input temperature, making it about 15 percent more thermodynamically efficient than the industry-DOE version.

The proposed Grant effort will be cost shared with DOE providing $99,570, the State of Maryland $114,823 and the Grantee $18,575 for a combined total of $232,968.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Bernard G. Canlas, PR 322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy, through the Energy Related Invention Programs (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public.

The Energy Concepts Company is meritorious based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) and the proposed project represents a unique idea that is not eligible for financial assistance under a recent, current, or planned solicitation.

The proposed technology has a strong possibility of allowing for future reductions in the nation's energy consumption where energy savings of 2 million barrels of oil may be achieved.

The anticipated term of the proposed grant shall be 24-months from the effective date of award.

Arnold Gjerstad,

Acting Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–18986 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the following sale: Contract No. S–EU–1014 for the sale of 9 grams of uranium-233 and 209 milligrams of thorium-229 to the Joint Research Centre, Karlsruhe, the Federal Republic of Germany for medical research purposes.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on August 4, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–18983 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Scoping Meeting and Close of Scoping: Environmental Impact Statement on Pacific Northwest Commercial Services and Rates

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Environmental Impact Statement (EIS) Scoping Meeting and Close of Scoping on Pacific Northwest (PNW) Commercial Services and Rates.

SUMMARY: On April 30, 1992, BPA published a Notice of Intent to Prepare an Environmental Impact Statement on the replacement of its long-term firm requirements power sales contracts (57 FR 18477). The Notice of Intent announced the date of an initial scoping meeting, which was held May 13, 1992, and explained that additional scoping meetings would be held. Since that time, BPA has been engaged in discussions with customers and interested members of the public to identify interests, issues, and alternatives for long-term service to PNW firm power loads. Based on these discussions, BPA proposes to include power and transmission rate designs, including the whole-sale power "tiered rate" concept, and access to Federal transmission system within the PNW among the topics to be addressed by the EIS. To reflect this change the title of the EIS, formerly, "Replacement of Long-Term Requirements Power Sales Contracts," will be "Pacific Northwest Commercial Services and Rates." BPA has scheduled an additional scoping meeting to receive comments from interested persons concerning the full range of issues, alternatives, and impacts to be considered in the EIS. BPA will then conclude the scoping process for the EIS and prepare an implementation plan to guide the preparation of the EIS.

DATES AND LOCATIONS: The scoping meeting will be held at the Holiday Inn, Portland Airport Hotel and Trade Center, Juarez Room, 8439 NE. Columbia Blvd., Portland, Oregon, from 3 to 8 p.m. on August 24, 1993. All interested parties are invited to attend.

Written comments should be submitted by September 13, 1993, to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Don Wolfe, Commercial Services and Rates EIS Project Manager, BPA–PG, P.O. Box 3621, Portland, Oregon 97208, 503–230–5145. You may also contact BPA's Public Involvement Office at 503–230–3478, or call BPA's nationwide toll-free number, 1–800–622–4519. Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Ms. Carol S. Fleischman, Spokane District Manager, room 112, West 920

Riverside Avenue, Spokane, Washington 99201, 509–353–2907.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109–1030, 206–553–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99632, 509–522–6225.

Ms. Jerry Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. James R. Normandeau, Boise District Manager, room 450, 304 N. 8th Street, Boise, Idaho 83702, 208–334–9137.

For further information on general DOE National Environmental Policy Act (NEPA) procedures or the status of a NEPA review, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: BPA was created by Congress in 1937 to transmit and market power from Bonneville Dam on the Columbia River. BPA now markets power from 30 hydroelectric projects and one nuclear plant in the PNW. Since 1937, BPA has marketed large amounts of power under successive 20-year firm power sales contracts with utilities and direct-service industrial customers (DSIs). The existing power sales contracts were offered in 1981 according to the requirements of the Pacific Northwest Electric Power Planning and Conservation Act (Pub. L. 96–501), and will expire in 2001. BPA is now preparing to offer new contracts to its utility, Federal agency, and DSI customers to replace the existing contracts.

As part of the initial scoping process, BPA invited interested persons to participate in the Power Sales Contract Renegotiation Working Group (Working Group) to identify issues, impacts, and alternatives to be considered in developing new contracts. The Working Group is made up of BPA staff, customer representatives, and other interested parties including representatives from the Northwest Power Planning Council, State governments, environmental groups, and other non-governmental entities, such as the Northwest Conservation Act Coalition. The Working Group began meeting in June 1992, and has continued meeting on a monthly basis, except for a hiatus in the spring of 1993 during the proceedings for BPA's 1993 rate case. Smaller, self-selected groups meet at other times to discuss issues in more detail or to produce documents. Smaller groups have met to talk about reserves, products and services, and EIS alternatives, and to brainstorm analytical needs. Work done by these groups is presented to the larger Working Group. Products from the Working Group are then shared with a broader public through mailings, Issue Alerts and Fact Sheets. In its work thus far, the Working Group has: (1) identified the interests of the participants in the process; (2) developed a comprehensive list of specific issues which the contracts should address; (3) articulated 18 broader "overarching" issues which the Working Group considers to be fundamental to the development of new contracts; and (4) discussed alternative concepts for new contracts. The results of these discussions are summarized in published fact sheets. Call 800–622–4520 for copies of fact sheets.

Overarching issues identified by the Working Group include some matters which are not addressed by the existing power sales contracts, such as access to BPA's PNW transmission facilities (excepting Interties with other regions) and wholesale power rate design. Working Group discussions have demonstrated that customers are reluctant to decide whether to execute contracts BPA may offer for firm power service without also knowing BPA's direction on other related issues, like transmission access for non-Federal power serving PNW firm loads and rate design, that affect customers' ability to serve their PNW firm loads. Recognizing that new power sales contracts will to a large degree define the business relationship between BPA and its PNW customers, and that BPA's decisions in this process essentially will select the form of that relationship, BPA proposes, as a matter of convenience and efficiency, to expand the scope of the EIS to include PNW transmission access and rate design matters. These topics are being combined for the convenience of participants who may direct their attention to a single public process instead of multiple processes addressing related subjects, and for efficiency in analysis of issues and alternatives concerning related matters.

Earlier discussions have suggested that rate design issues would be the subject of a separate EIS apart from the EIS on power sales contracts. By expanding the scope of the EIS process to include rate design, BPA is setting aside the prospect of a separate rate design EIS in favor of a combined EIS on both contracts and rates. Therefore, those who desire to comment on the scope of BPA's NEPA evaluation of rate designs may only do so during scoping for this EIS. Comments received on rate design will be considered for the 1995 Rate Case and possibly rate design decisions for later rate cases. Although other technical discussions are planned or underway on tiered rates and other rate design issues, no other NEPA forum is now planned to consider power and transmission rate design. Individuals or groups wishing to comment on the scope of this EIS are urged to raise any concerns they may have relating to rate design in this EIS scoping process.

The same is true of PNW transmission access. Although technical discussions are underway to address transmission access, particularly to address the access provisions of the National Energy Policy Act of 1992, no other NEPA forum is now planned to consider PNW transmission access. BPA encourages interested parties to raise any concerns they may have relating to transmission access in this EIS scoping process.

BPA seeks public input to supplement the work of the Working Group in defining the scope of the EIS. Those who desire more detailed information on EIS issues and alternatives may obtain project publications, information papers, and background materials from the information contacts listed above. Following the scoping meeting, BPA will conclude the scoping period for the EIS and will prepare an implementation plan that will describe the steps for completing the EIS. Comments received in the scoping meeting, together with written comments received and the results of previous scoping activities, will be considered in planning the preparation of the draft EIS and will be summarized in the implementation plan.

Issued in Portland, Oregon, on July 29, 1993.

Steven G. Hickok,

Executive Assistant Administrator, Bonneville Power Administration.

[FR Doc. 93–18982 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–M

Office Of Energy Efficiency and Renewable Energy

[Docket EE-93-Nina-Cert]

Applications From Investor-Owned Utilities for Certification of Net Income Neutrality

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice.

SUMMARY: The Clean Air Act Amendments of 1990 allow an investor-owned electric utility, whose rates are regulated by a state utility regulatory authority, to seek sulfur dioxide emission allowances from the Conservation and Renewable Energy Reserve for avoided emissions from the installation of applicable conservation measures. An applicant for such allowances must obtain certification of net income neutrality from the Secretary of Energy. This certification verifies that the state regulatory authority has established rates and charges which ensure that the net income of such utility after implementation of conservation measures is at least as high as it would have been if the conservation measures had not been implemented. This notice provides: (a) Guidance to assist the potential applicant for such certification in determining what information it may be necessary to include in its application, in order to address its specific circumstances; and, (b) information regarding the review and comment procedures which the Department of Energy (DOE) will follow in regard to these applications.

ADDRESSES: All applications and attachments (10 copies), responses to DOE requests for additional information, comments, and other requests should be sent to: U.S. Department of Energy; Office of Energy Efficiency and Renewable Energy; EE-10, Room 6C-036; 1000 Independence Ave., SW.; Washington, DC 20585. Attention: Net Income Neutrality Certification, Docket EE-93-NINA-CERT. If an application has already been filed with DOE, the application number must be included.

FOR FURTHER INFORMATION CONTACT: Diane B. Pirkey; U.S. Department of Energy; EE-14; 1000 Independence Ave., SW.; Washington, DC 20585; (202) 586-9839.

SUPPLEMENTARY INFORMATION: The requirements for net income neutrality certification by DOE are prescribed under section 404(f)(2)(B)(iv) of the Clean Air Act, 42 U.S.C. 7651c(f)(2)(B)(iv) as added by Section 401 of the Clean Air Act Amendments, Public Law 101-549 (November 15, 1990). The requirements are further addressed in the final rule adopted by the U.S. Environmental Protection Agency (EPA) and published in the **Federal Register**. (58 Fed. Reg. 3590 (January 11, 1993), to be codified at 40 C.F.R. Sec. 72) (see Sec. 72.2, providing a definition of net income neutrality; Sec. 73.82(b), establishing application requirements; and Sec. 73.83, describing generally the Secretary of Energy's review of such applications.) This review is separate from the EPA review of applications for the allocation of allowances from the Conservation and Renewable Energy Reserve.

I. Applications

Although the EPA final rule sets forth the comprehensive substantive rules for DOE net income neutrality determinations, DOE wishes to call five specific matters regarding the contents of applications for certification to the attention of potential applicants:

1. The "Certifying Official" who is referred to at section 73.82(e) of the regulations must sign the application, and include the statement that is set out in section 73.82(e)(2) of the regulations. The application should indicate the position of the certifying official;

2. Section 73.82(b) requires submission of the order(s) or decision(s) setting forth the rate-making mechanisms that ensure net income neutrality. With regard to these, the application should describe: (a) Their effect; (b) any accounting and cost recovery practices regarding net income neutrality that are adopted therein; (c) where there are multiple relevant orders, their relationship to one another (unless this is evident from their text). The application should also include;

(a) any order(s) and decision(s) describing the state regulatory authority's general policy and overall regulatory framework related to utility's achievement of net income neutrality, and,

(b) any other relevant materials related to the specific conservation measures and programs undertaken during the period for which the applicant is requesting net income neutrality certification, which,

(i) allow the recovery of the costs of such measures and programs,

(ii) address the impact of related lost sales,

(iii) describe incentive measures or any other factors that should be considered by the Department in determining whether to certify net income neutrality.

3. Applicants are requested to indicate the time period during which rates and charges that ensured net income neutrality, as described in the application, were in effect. Applicants should state the date and the year when the subject rates and charges became effective. If the subject rates and charges are still in effect, the application should so state. If they are no longer in effect, the application should indicate the date and year at which they ceased to be effective. If such dates are not provided, DOE will limit its review to the period: (a) Beginning either on January 1, 1992, or on the effective date of the latest rate order included in the application, whichever is most recent, and; (b) ending on the date that the application is accepted for filing.

4. The draft forms released by the Environmental Protection Agency in October 1992 included a form for net income neutrality applications. It has since been determined that applicants will not be required to use this form. However, as indicated above, each application must be signed by the certifying official, and must clearly identify the applicant electric utility and the state rate-making jurisdiction(s) for which certification is sought.

5. Sec. 73.82(b)(1)(iii) of the regulations indicates that, if necessary to facilitate its review, DOE may request additional information from the applicant. For this reason, each application should identify the name, address, telephone number, and telephone facsimile number of the staff contact to whom such requests should be directed. Responses to such a request should also include the application and docket numbers assigned by DOE, and indicate the written request to which the response is being made. Responses should be sent to the address listed in the **ADDRESSES** section of this notice.

II. Department of Energy Review

DOE encourages all investor-owned utilities to apply, where it appears that there is compliance with the requirements of the regulations. DOE will review the applications on a case-by-case basis.

The regulations indicate that the existence of any one or more rate-making mechanisms shall not necessarily constitute fulfillment of the net income neutrality requirement. (Sec. 73.82 (a)(9)(ii)) In line with this, certifications of net income neutrality will be based upon all significant factors affecting whether the rates and charges of the applicant utility, for the relevant jurisdiction and time period, meet the definition of net income neutrality that is set forth in Sec. 72.2 of the

regulations. Examples of factors which in selected cases could be relevant are: elements of rate recovery not specifically described in commission orders, related accounting practices, any relevant comparisons to the recovery of supply-side resource costs, the amount of available incentives and net lost revenues, carrying costs, working capital provisions, deferrals, any conditions applicable to cost or lost revenue recovery, true-up procedures for performance based rate adjustments, the effect of any profit caps, or the impact of conservation programs on off-system sales. This approach provides flexibility for applicants in meeting the statutory requirement. It also recognizes variations in the regulatory treatment of demand-side management for different utilities, including, in many instances, different utilities within the jurisdiction of the same state regulatory authority.

III. Solicitation of Comments

DOE intends to undertake an initial completeness review of each application. An application which is deemed complete will be accepted for filing. When an application is accepted for filing, the Department intends in most instances to place a notice of the filing and request for public comment in the **Federal Register**.

These notices will establish a time period during which interested parties may file comments on the application's request for certification of net income neutrality. Unless otherwise specified, DOE expects to accept comments until 5:00 pm Eastern Standard Time on the 35th day after the date that the application is accepted for filing. If the 35th day falls on a weekend or a holiday, comments will be accepted on the next subsequent business day. For purposes of calculating the time for the filing of comments, the date on which the application was deemed to have been filed shall be listed in the **Federal Register** notification and included in the calculation of the period for filing comments. Written comments may be submitted to the address listed in the ADDRESSES section of this notice.

Additionally, the Department expects to mail notification of the filing of the application to the affected state regulatory authority and to submit notices to the National Association of Regulatory Utility Commissioners (NARUC) for inclusion in the *NARUC* Bulletin.

Copies of applications, responses to requests for additional information, and comments will be available for review and copying by the public at: the Freedom of Information Reading Room; U.S. Department of Energy; 1000 Independence Ave., SW.; Washington, DC 20585; (202) 586–6020, Monday through Friday, excluding federal holidays, between the hours of 9 a.m. and 4 p.m. Applicants also are requested to make a copy of their application available for review at their offices or at a central location within the affected state jurisdiction. This location and the times at which the application will be available for public review should be specified in the application, and, if clearly specified, will be included in the Department's **Federal Register** notice of the application's filing.

Dated: August 2, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 93–19897 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC).

Date and Time: Tuesday, August 31, 1993 at 9 a.m.

Place: The Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Streets, NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, DC 20585, Telephone: 202/586–3867.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order and introductory remarks by Ray L. Hunt, Chairman of the NPC.
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy.
—Consider and approve the proposed final report of the NPC Committee on Refining, Kenneth T. Derr, Chairman.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, room IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 3, 1993.

Marcia Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 93–18984 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 2561–003, et al.]

Hydroelectric Applications [Sho-Me Power Corp., et al]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: New Major License.

b. Project No.: 2561–003.

c. Date Filed: December 27, 1991.

d. Applicant: Sho-Me Power Corporation.

e. Name of Project: Niangua.

f. Location: Niangua River in Camden County, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Howard Fillmer, Sho-Me Power Corporation, 301 West Jackson, Marshfield, MO 65706. (417) 468–2615.

i. FERC Contact: Hector M Perez (202) 219–2843.

j. Sixty days after the issuance date of this notice (September 20, 1993).

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The project consists of: (1) An 878–foot-long dam with a 24-foot-high, 300-foot-long concrete gravity overflow section, a 533-foot-long rock and earthfilled section and a rock-filled crib section; (2) a reservoir of about 360 acres; (3) an 830-foot-long concrete-lined tunnel; (4) a powerhouse with an installed capacity of 3,000 kW; (5) a substation and transmission line connection; and other appurtenances.

m. Purpose of the Project: To generate electricity to offset the purchase of energy by the applicant from Associated

Electric Cooperative, Inc., its major supplier.

n. This notice also consists of standard paragraphs D9.

o. Available copies of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address specified in item h above.

2 a. Type of Application: New Major License.

b. Project No.: 2514–003.

c. Date filed: December 16, 1991.

d. Applicant: Appalachian Power Company.

e. Name of Project: Byllesby/Buck.

f. Location: On the New River near the city of Galax, in Carroll County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. B.H. Bennett, Assistance Vice President, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2930.

i. FERC Contact: Mr. Hector Perez, (202) 219–2843.

j. Comment Date: Sixty days after the issuance date of this notice (September 20, 1993).

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: This project consists of two developments. The first, the Byllesby development, consists of: (1) A 44-foot-high, 528-foot-long concrete dam and spillway section topped with 9 sections of 9-foot-high flashboards and 6 bays of tainter gates; (2) a 239-acre impoundment; (3) a powerhouse containing four generating units with a total installed capacity of 21,600 kW; and (4) appurtenant facilities.

The second, the Buck development, consists of: (1) A 44-foot-high, 352-foot-long concrete dam; (2) a 1,005-foot-long, 19-foot-high spillway section topped with twenty-four sections of 9-foot-high flashboards and 6 bays of tainter gates; (3) a 66-acre impoundment; (4) a powerhouse containing three generating units with a total installed capacity of 8,505 kW; and (5) appurtenant facilities."

The Applicant is not proposing any changes to the existing project facilities as licensed. The estimated average annual generation for the Byllesby and Buck developments are 64,000 MWh and 42,000 MWh, respectively.

m. Purpose of Project: All energy generated by the project would be utilized by the customers of the Appalachian Power Company.

n. This notice also consists of the following standard paragraphs: D9.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Appalachian Power Company, located at 40 Franklin Road, Roanoke, Virginia 24022, or by calling Mr. B.H. Bennett at (614) 223–2930.

3 a. Type of Filing: Settlement Agreement for the Development of Fish Passage Facilities at the Safe Harbor, Holtwood, and York Haven Projects on the Susquehanna River, PA.

b. Project Nos: 1025–010, 1881–012, and 1888–012.

c. Date Filed: June 2, 1993.

d. Licensee: Safe Harbor Water Corporation, Pennsylvania Power and Light Company, and York Haven Power Company.

e. Name of Projects: Safe Harbor (FERC No. 1025), Holtwood (FERC No. 1881), and York Haven (FERC No. 1888).

f. Location: The lower Susquehanna River in southeastern Pennsylvania: Lancaster and York Counties.

g. Filed Pursuant to: The 1984 Susquehanna River Settlement Agreement, approved by the Commission on April 10, 1985 (31 FERC ¶61,308).

h. Licensee Contact: Mr. William J. Madden, Jr., Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502. (202) 371–5700.

i. FERC Contact: Mr. George C. O'Connor, (202) 208–0439 Dr. John M. Mudre, (202) 219–1208.

j. Comment Date: September 10, 1993.

k. Description of Filing: The licensees for the Safe Harbor, Holtwood, and York Haven Projects have entered into a settlement agreement with the Pennsylvania Department of Environmental Resources, the Pennsylvania Fish and Boat Commission, the Maryland Department of Natural Resources, the U.S. Fish and Wildlife Service, the Susquehanna River Basin Commission, the Upper Chesapeake Watershed Association, Inc. and the Pennsylvania Federation of Sportmen's Clubs. The agreement was also executed by the Governors of the States of Maryland and Pennsylvania. The settlement agreement provides for upstream and downstream fish passage facilities at the projects. The agreement contains provisions for the construction and operation of upstream passage facilities at Safe Harbor and Holtwood Projects no later than April 1, 1997 and at the York Haven Project no later than April 1 of the third year following the in-service date of the Safe Harbor and Holtwood facilities.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. Type of Application: New License.

b. Project No.: 1922–008.

c. Date filed: November 19, 1992.

d. Applicant: The City of Ketchikan, dba Ketchikan Public Utilities.

e. Name of Project: Beaver Falls.

f. Location: On Beaver Falls Creek in Ketchikan Gateway Borough, Alaska. It occupies lands within the Tongass National Forest.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Thomas W. Stevenson, General Manager, 2920 Tongass Avenue, Ketchikan, AK 99901. (907) 225–1000.

i. FERC Contact: Hector M. Perez at (202) 219–2842.

j. Deadline for interventions and protests: September 13, 1993.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E.

l. Description of Project: The existing project consists of the Silvis Development and the Beaver Falls Development.

The Silvis Development consists of: (1) The 60-foot-high, 135-foot-long Upper Silvis Dam with a crest elevation of 1,164 feet; (2) the Upper Silvis Spillway with a crest elevation of 1,154 feet; (3) an 800–foot–long spillway channel from the Upper Silvis Spillway to Lower Lake silvis; (4) Upper Lake Silvis with a storage capacity of 38,000 acre-feet at maximum water surface of 1,154 feet; (5) the 980–foot–long Tunnel 1; (6) a 36–inch–diameter penstock; (7) Silvis Powerhouse containing a 2,100-KW generating unit; (8) a trapezoidal-shaped channel tailrace about 150 feet long discharging into Lower Lake Silvis; (9) a 2,900-foot-long, 5-kV submarine cable and a 7,100-foot-long, 34.5-kV aerial transmission line; and (101) other appurtenances.

The Beaver Falls Development consists of: (1) Lower Lake Silvis with a storage capacity of 8,052 acre-feet at maximum water surface elevation of 827 feet; (2) the 32–foot-high, 140-foot-long Lower Silvis Dam; (2) the 3-foot-high, 40-foot-long Beaver Falls Creek

Diversion Dan. with 6-inch-high flashboards, about two-thirds of a mile downstream of Lower Lake Silvis; (3) an intake structure at Lower lake Silvis; (4) the 3,800-foot-long Tunnel 2; (4) a 42-inch-diameter penstock through Tunnel 3 feeding units 3 and 4 (2,000 kW each) in Beaver Falls powerhouse; (5) a 225-foot-long, 20-inch-diameter wood stave pipe from Tunnel 2 discharging into Beaver Falls Creek just upstream of the diversion dam; (6) a 28-inch-diameter, 4,170-foot-long penstock from the diversion dam feeding unit 1 (1,000 kW) at the Beaver Falls Power house (unit 2 has been decommissioned); (7) 2 Tailrace channels; and (8) other appurtenances.

m. This notice also consists of the following standard paragraph: B1 and E.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NW., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

5 a. Type of Application: Approval of Mitigation Plan and Expansion of Project Boundary.

b. Project No: 485–027.

c. Date Filed: June 17, 1993.

d. Applicant: Georgia Power Company.

e. Name of Project: Bartletts Ferry Project.

f. Location: Cattahoochee River, Harris County, Georgia and Chambers County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ms. JoLee Gardner, Georgia Power Company, 270 Peachtree Street, Atlanta, GA 30303. (404) 526–2406.

i. FERC Contact: Heather Campbell, (202) 219–3097.

j. Comment Date: September 10, 1993.

k. Description of Project: Georgia Power Company, licensee for the Bartletts Ferry Project, requests approval of a mitigation plan and an expansion of the project boundary. The 230 acres of land in the expansion would complement the Blanton Creek Wildlife Area which is managed by the Georgia Department of Natural Resources.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6 a. Type of Application: New License

b. Project No.: 2459–005

c. Date Filed: December 20, 1991

d. Applicant: West Penn Power Company

e. Name of Project: Lake Lynn

f. Location: On the Cheat River in Monogalia County, West Virginia and Fayette County, Pennsylvania

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: Mr. D.E. Gervenak, Executive Director, Operating, Allegheny Power Service Corporation, 800 Cabin Hill Drive, Greensburg, PA 15601. (412) 838–6835.

i. FERC Contact: James Hunter at (202) 219–2839

j. Deadline for interventions and protests: September 30, 1993

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The Lake Lynn Hydro Station consists of: (1) A 125-foot-high, 1,000-foot-long concrete gravity type dam with a 624-foot-long spillway controlled by 26 tainter gates, each 17 feet high by 21 feet long; (2) a reservoir with a surface area of 1,700 acres and containing 72,000 acre-feet of water at full pool elevation 870 feet; (3) a log boom and trash racks at the intake facility; (4) eight 12-foot by 18-foot, gated penstocks of reinforced concrete; (5) a 72-foot by 165-foot, 68-foot-high red brick powerhouse containing four identical generating units with a total rated capacity of 51.2 megawatts; and (6) dual 800-foot-long, 138-kV transmission lines.

m. Purpose of Project: The average annual generation of the Lake Lynn project is 132.7 GWh. Power generated at the project is delivered to customers within the applicant's service area.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Allegheny Power Service Corporation's offices at 800 Cabin Hill Drive, Greensburg, Pennsylvania.

7 a. Type of Application: Amendment of Project Recreation Plan.

b. Project No: 3409–016.

c. Date Filed: July 7, 1993.

d. Applicant: Boyne USA, Inc.

e. Name of Project: Boyne Dam.

f. Location: Charlevoix County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Everett Kircher, President, Boyne USA Inc., P.O. Box 19, Boyne Falls, MI 49713–0019, (616) 549–2441.

i. FERC Contact: Dan Hayes, (202) 219–2660.

j. Comment Date: September 10, 1993.

k. Description of Project: Boyne USA, Inc. licensee for the Boyne Dam Project has filed an application to amend the recreation access requirements of its project license. Currently, the licensee is required to maintain access for anglers to two ten-foot-wide easement strips on either side of the project tailrace. The proposed amendment would limit the easement strips to 200 feet below the project spillway and eliminate access to the easement strips from the road. Fishermen would be required to wade up the Boyne River to reach the access easements.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

8 a. Type of Application: Exemption of Small Conduit Hydroelectric Facility (Tendered Notice).

b. Project No.: 11178–001.

c. Date filed: July 12, 1993.

d. Applicant: City of Tucson, Arizona.

e. Name of Project: City of Tucson Hydroelectric Project.

f. Location: At eleven locations within the city of Tucson's water distribution system, which gets its water from an existing U.S. Bureau of Reclamation aqueduct located west of the city, in Pima County, Arizona.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas Mundinger, Tuscon Water, City of Tucson, Arizona, P.O. Box 27210, Tuscon, Arizona 85726–7210.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Description of Project: The project would be located on the city of Tuscon's water distribution system which includes the enclosed Clearwell Reservoir and approximately 28 miles of water distribution pipeline. The project itself would consist of 11 powerhouses whose generating units have installed capacities ranging from 49 kW to 1,275 kW, for a cumulative capcity of 4,246 kW. The project excludes the existing conduits on which the powerhouses are located.

k. With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO)*, as required by Sec. 106, National Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, SHPO, Indian Tribe, or person believes that the

applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the application is filed, and must serve a copy of the request on the applicant. (September 10, 1993)

m. The Commission's deadline for the applicant's filing of a final amendment to the application is October 12, 1993.

9 a. Type of Application: Preliminary Permit

b. Project No. 11399–000.

c. Date filed: March 25, 1993.

d. Applicant: Tumalo Irrigation District.

e. Name of Project: Bend Canal Hydroelectric Project.

f. Location: On the Deschutes River in Deschutes Oregon, near the town of Bend. T.18S., R11E. section 19, Willamette Base and Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. Elmer G. McDaniels, Manager, Secretary to the Board of Directors, Tumalo Irrigation District, 64697 Cook Avenue, Bend, Oregon 97701, (503) 382–3053.;

Donald H. Clarke, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, NW., Washington, DC 20006, (202) 783–4141.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219–2842.

j. Comment Date: September 30, 1993.

k. Description of Project: The proposed project would consist of: (1) The existing 258-foot-long concrete gravity overflow Tumalo Division Dam; (2) the existing 16,500-foot-long canal/pipeline; (3) a 54-inch-diameter, 500-foot-long penstock; (4) a powerhouse containing a single generating unit with a total installed capacity of 2,000 kW, producing an average annual energy output of 9,600 MWh; (5) a tailrace; and (6) a 12.5–kV, .75-mile-long transmission line tying into an existing Pacific Power and Light Company line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $50,000. No new roads will be needed for the purpose of conducting these studies.

l. Purpose of Project: Project power would be sold to a local utility or municipality.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No. 11410–000.

c. Date filed: May 3, 1993.

d. Applicant: Soldier Creek Hydro Associates.

e. Name of Project: Soldier Creek Hydroelectric Project.

f. Location: On Soldier Creek in Tooele County, Utah, near the town of Stockton. T.4S., R4W., sections 31, 32, 33, 34, 35, and 36. Salt Lake Base and Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. Gene Deveraux, 1190 North Spring Creek Place, P.O. Box 870, Springville, UT 84663–0870, (801) 489–0089

Mr. Frank Haws, 719 North 400 East, Logan, UT 84321.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219–2842.

j. Comment Date: September 30, 1993.

k. Description of Project: The proposed project would consist of: (1) An existing reinforced concrete drop inlet structure, with an overflow wall and a sluice-bypass gate at elevation 7,420 feet, msl; (2) a 12-inch diameter, 21,000-foot-long buried penstock, presently under construction by the state and Soldier Creek Irrigation District for irrigation purposes; (3) a powerhouse containing a single generating unit with an installed capacity of 1,600 kW, producing an average annual energy output of 10,577,600 KWh; (6) a tailrace; and (7) a 2-mile-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $35,000. No new roads will be needed for the purposes of conducting these studies.

l. Purpose of Project: Project power would be sold to a local utility or municipality.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Original License for Major Project (Tendered Notice).

b. Project No.: 11367–001.

c. Date filed: July 20, 1993.

d. Applicants: Peak Power Corporation, Kveener Venture, Inc., Las Vegas Energy Storage Limited Partnership.

e. Name of Project: Sheep Mountain Pumped Storage, Hydroelectric Project.

f. Location: Predominantly on lands administered by the Bureau of Land Management in the Sheep Mountains, approximately 19 miles south of Las Vegas, in Clark County, Nevada. R60E, T22S to T25S.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: David Olsen, President, Peak Power Corporation, 4365 Executive Drive, Suite 900, San Diego, CA 92121, (619) 622–7800.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Description of Project: The proposed pumped storage project would consist of; (1) Five dams, ranging in height from 18 feet to 130 feet, forming a 50-acre upper reservoir; (2) a 14-foot-diameter, 730-foot-long concrete vertical shaft; (3) a 14-foot-diameter, 1,700-foot-long concrete horizontal tunnel; (4) a 1,255-foot-long steel penstock; (5) a powerhouse containing two generating units with a total installed capacity of 200 MW; (6) a 50-foot-high dam creating a 65-acre lower reservoir; (7) a 17.5-mile-long transmission line interconnecting with an existing Nevada Power Company transmission line; and (8) appurtenant facilities.

k. With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR., at § 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the application is filed, and must serve a copy of the request on the applicant. (September 20, 1993)

m. The Commission's deadline for the applicant's filing of a final amendment to the application is October 20, 1993.

12 a. Type of Application: Minor License.

b. Project No.: 11426–000.

c. Date filed: July 22, 1993.

d. Applicant: T.A. and Holly S. Keck.

e. Name of Project: Blackstone Mill.

f. Location: on the Mahantango Creek, near Pillow, Dauphin County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: T.A. Keck, Blackstone Mill, P.O. Box 98, Pillow, PA 17080, (717) 758–3340.

i. FERC Contact: Mary C. Golato (202) 219–2804.

j. Deadline Date for Filing Additional Scientific Studies: 60 days from the filing date of application.

Deadline Date for Filing Protests or Motions to Intervene: 60 days from issuance date of this notice.

Deadline Date for Filing Comments, Recommendations, Terms & Conditions

and Prescriptions: 60 days from the issuance date of this notice.

Deadline Date for Filing Reply Comments: 105 days from issuance date of this notice.

k. Status of Environmental Analysis: This application is accepted for filing and is ready for environmental analysis at this time—see attached D4.

l. Description of Project: The existing project consists of the following features: (1) An existing concrete dam 100 feet wide and 2 feet high; (2) an existing impoundment with a storage capacity of 7 acre-feet and a normal water surface elevation of 470 feet mean sea level; (3) an existing powerhouse housing two existing turbine-generator units at a total installed capacity of 65 kilowatts; (4) an existing 12.5-kilovolt transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 200,000 kilowatthours. The dam is owned by T.A. Keck.

m. Purpose of Project: All project energy generated would be utilized by the applicant or sold to a utility.

n. With this notice, we are initiating consultation with the Pennsylvania State Historic Preservation Officer (Shpo), as required by § 106, National Historical Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

o. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

p. This notice also consists of the following standard paragraphs: A2, A9, B1, and D4.

q. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NW., room 3104, Washington, DC 20426, or by calling (202) 291–1371. A copy is also available for inspection and reproduction at Mr. Ted Keck, Blackstone Mill, P.O. Box 98, Pillow, PA 17080 (717) 758–3340.

13 a. Type of Application: Amendment of License.

b. Project No.: 6879–009.

c. Date Filed: March 1, 1993.

d. Applicant: Southeastern Hydro-Power, Inc.

e. Name of Project: W. Kerr Scott Project.

f. Location: On the Yadkin River, in Wilkes County, North Carolina. The project will utilize the existing U.S. Army Corps of Engineer's W. Kerr Scott Dam and Reservoir.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Charles Mierek, P.E., President, Southeastern Hydro-Power, Inc., 5250 Clifton-Glendale Road, Spartanburg, SC 29307–4618, (803) 579–4405.

i. FERC Contact: Paul Shannon, (202) 219–2866.

j. Comment Date: September 16, 1993.

k. Description of Amendment: Southeastern Hydro-Power, Inc. requests authorization to construct the project's powerhouse on the left side (looking downstream) of the existing outlet works conduit. The powerhouse was authorized to be on the right side of the conduit which extends from the project's reservoir to the Yadkin River. The licensee also proposes to terminate the powerhouse tailrace within 150 feet of the end of the existing vertical side wall of the stilling basin so that all flows from the powerhouse will enter the channel upstream of the existing fishing pier. Further, the licensee requests that the Commission delete the article 46 requirement for an instream flow study plan to determine minimum flows. Instead, the licensee proposes that all flows will pass through the powerhouse as dictated by release from the U.S. Army Corps of Engineers.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

14 a. Type of Application: Major License.

b. Project No.: 10893–001.

c. Date Filed: March 19, 1992.

d. Applicant: HY Power Energy Company.

e. Name of Project: Inglis Lock By-pass Dam.

f. Location: On the Inglis Lock By-pass Dam, Withlacoochee River, Levy County, Florida.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Robert Karow, 7008 Southwest 30th Way, Gainesville, FL 32601, (904) 336–4727.

i. FERC Contact: Charles Raabe (tag) (202) 219–2811.

j. Deadline for interventions and protests: October 4, 1993.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph D7.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Inglis Lock By-pass Dam, and would consist of: (1) An intake channel with a length of approximately 175 feet and a maximum width of 143 feet; (2) a reinforced concrete powerhouse with dimensions of 115 feet by 28 feet and containing one 3.0-megawatt (MW) pit turbine and generator unit, rated at a head of 22.5 feet and a hydraulic capacity of 1,667 cubic feet per second (cfs); (3) a short tailrace lined with concrete and rip-rap; (4) a 470-foot-long, 12.47-kilovolt (kV) transmission line; (5) a substation with dimensions of 25 feet square; and (6) appurtenant equipment and facilities. The project would have an estimated annual output of 15.7 GWh.

m. Purpose of Project: Power generated would be sold to Florida Power Corporation.

n. This notice also consists of the following standard paragraphs: A2, A9, B1, D7.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at HY Power Energy Company, 7008 Southwest 30th Way, Gainesville, Florida 32601, (904) 336–4727.

15 a. Type of Application: Preliminary Permit.

b. Project No. 11422–000.

c. Date filed: July 1, 1993.

d. Applicant: Dike Hydroelectric Partners, Inc.

e. Name of Project: Dike Hydroelectric Project.

f. Location: On the Snake River in Elmore County, Idaho near the town of Glenns Ferry. T. 5S., R.11E, section 33. T.6S., R.11E, sections 4, 9, 16, 14, 11, 12, 7, 15.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Bart M. O'Keeffe, P.O. Box 245, Byron, CA 94514, (510) 634–1550.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219–2842.

j. Comment Date: October 4, 1993.

k. Description of Project: The proposed project would consist of: (1) A 188-foot-high, 5900-foot-long roller compacted concrete dam with a crest elevation of 2,600 feet, msl creating; (2) a 500-acre reservoir with a storage capacity of 20,000 acre-feet and a water

surface elevation of 2,585 feet msl; (3) a 90-foot-long concrete ogee type spillway consisting of two 40-foot-high radial taniter gates, with a crest elevation of 2,600 feet msl; (4) a powerhouse adjacent to the dam containing two generating units with a total installed capacity of 73,200 kW, producing an average annual energy output of 400 GWh; (5) a switchyard; and (6) a 3,200-foot-long, 138-kV transmission line typing into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $2,500,000. No new roads will be needed for the purpose of conducting these studies.

l. Purpose of Project: Project power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. Type of Application: Proposed Recreation Plan update.

b. Project No: 2149–041.

c. Dated Filed: January 4, 1993.

d. Applicant: Public Utility District No. 1 of Douglas County.

e. Name of Project: Wells Project.

f. Location: Wells Reservoir area in Douglas County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Charles Robins, Supervisor of Properties, P.U.D. No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802–4497, (509) 884–7191.

i. FERC Contact Person: Jack Hannula, (202) 219–1040.

j. Comment Date: September 20, 1993.

k. Description of Project: On January 4, 1993, Public Utility District No. 1 of Douglas County, licensee for the Wells Project, filed a Recreation Action Plan-1992 Update as required by article 51 of the license. The licensee requests Commission approval of the plan which provides for improvements to existing recreational facilities and the construction of new recreational development at the project, to include facilities in the cities of Pateros, Brewster, and Bridgeport and other locations on the reservoir. Proposed recreation development includes trails, picnic facilities, camp sites, parking, boat launches, restrooms, a basketball court, a gazebo, an interpretive display, landscaping, lighting, painting and resurfacing.

l. This notice also consists of the following standard paragraphs: B, C1, D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 11425–000.

c. Date Filed: July 20, 1993.

d. Applicant: City of Auburn, New York.

e. Name of Project: Owasco River.

f. Location: On the Owasco River within the city limits of Auburn in Cayuga County, New York.

g. Filed Pursuant to: Federal Power Act 17 U.S.C. 791(a)–825(r).

h. Contact Person: James Malone, City Manager, City of Auburn, Memorial City Hall, 24 South Street, Auburn, NY 13021–3832, (315) 253–0282.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Comment Date: October 4, 1993.

k. Description of Project: The proposed project would consist of four existing hydroelectric sites as follows: (1) The State Dam site owned by the City of Auburn and consisting of (a) an existing, unreinforced-concrete, gravity dam; (b) Owasco Lake having a surface area of 10.6 square miles and a storage capacity of 50,000 acre-feet; (c) a new powerhouse containing one generating unit with a rated capacity of 310 kW and an estimated annual energy production of 1,710 MWh; and, (d) a 700-foot-long transmission line; (2) the Dunn and McCarthy site owned by Monticola Associates, Inc. and consisting of (a) a concrete dam; (b) a 1,100 foot-long power canal; (c) an intake structure; (c) a 60-foot-long penstock; (d) a powerhouse containing one new generating unit with a rated capacity of 612 kW and an estimated annual energy production of 2,600 MWh; and, (e) a 100-foot-long transmission line; (3) the Aurelius site owned by the City of Auburn and consisting of (a) an existing concrete dam; (b) an existing powerhouse containing one new generating unit with a rated capacity of 360 kW and an estimated annual energy production of 1,710 MWh; and, (c) a 1-mile-long transmission line; and, (4) the Canoga site owned by Robert J. Ross and Cap Realty Corporation and consisting of (a) new 7-foot-high concrete dam; (b) a new 900-foot-long open flume; (c) a new powerhouse containing one generating unit with a rated capacity of 430 kW and an estimated annual energy production of 2.050 MWh; and, (d) a 200-foot-long transmission line. The cost of the work to be performed under the preliminary permit is estimated to be $129,000.

l. Purpose of Project: The power produced would be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

18 a. Type of Application: Subsequent Minor License.

b. Project No.: 2347–001.

c. Date filed: December 23, 1991.

d. Applicant: Wisconsin Power and Light Company.

e. Name of Project: Janesville Central.

f. Location: On the Rock River near Janesville in Rock County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Norman E. Boys, P. O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3086.

i. FERC Contact: Ed Lee, (202) 219–2809.

j. Deadline Date: See paragraph D9. (October 4, 1993).

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The licensed project would consist of the following existing facilities: (1) A reinforced concrete and timber gated spillway; (2) a reservoir with a surface area of 548 acres at surface elevation 769.1 feet m.s.l. and a storage area of 3,675 acre feet; (3) a powerhouse containing two generating units each with a rated capacity two generating units each with a rated capacity of 250 kW; and (4) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 2,033,667 kWh.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. Available Location of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Power and Light Company, 222 West Washington Avenue, Madison, WI 53701–0192, or by calling (608) 252–3311.

19 a. Type of Application: Minor License.

b. Project No.: 11142–000.

c. Date Filed: May 3, 1991.

d. Applicant: Consolidated Hydro Maine, Inc.

e. Name of Project: Estes Lake Dam.

f. Location: On the Mousam River, York County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C 791(a)–824(r).

h. Applicant Contact: Mr. Wayne E. Nelson, RR2 Box 690 H Industrial Avenue, Sanford, ME 04073, (207) 490–1980.

i. FERC Contract: Ed Lee (202) 219–2809.

j. Deadline Date: See paragraph D9. (October 4, 1993).

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The existing project consists of the following: (1) A concrete-capped cut stone dam eight to 40 feet high and 726 feet long, with a left abutment dike about six feet high and 115 feet long; (2) an impoundment with a surface area of 474 acres and a normal water surface elevation of 214 feet msl; (3) a wooden/brick and masonry powerhouse housing two hydropower units with a combined capacity of 775 kW; (4) a tailrace excavated from bedrock with cut stone sidewalls; (5) a 2,000 kVA transmission line five miles long; and (6) appurtentant facilities. The average annual energy generation is 3.8 GWh and is sold to Central Maine Power Company. The project facilities are owned by the applicant.

m. Purpose of Project: The purpose of the project is to generate electric energy for sale.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. Available Location of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction by calling Consolidated Hydro Maine, Inc. at (207) 490–1980.

20 a. Type of Application: Subsequent License.

b. Project No.: 2417–001.

c. Date Filed: December 23, 1991.

d. Applicant: Northern States Power Company.

e. Name of Project: Hayward Hydro Project.

f. Location: On the Namekagon River in Sawyer County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Anthony G. Schuster, Vice President, Power Supply, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI, (715) 839–2621.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Deadline Date: See paragraph D9. (October 4, 1993)

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The project as licensed consists of the following: (1) Three existing earthen embankments, the first 200 feet long, the second 80 feet long and the third 85 feet long, with concrete and steel sheetpile retaining walls present on the upstream and downstream ends; (2) an existing concrete over-flow spillway, approximately 120 feet long and founded on rock-filled timber cribbing, containing ten stop-log bays separated by concrete spillway piers; (3) an existing reservoir with a surface area of 247 acres and a total volume of 2,000 acre-feet at the normal maximum surface elevation of 1187.4 MSL; (4) an existing concrete intake channel, about 42 feet long with side walls approximately 12.5 feet high and a width ranging from 13 feet to 8 feet, containing (a) a steel trashrack, and (b) a headgate; (5) an existing powerhouse with a concrete substructure and a brick masonry wall superstructure, approximately 18 feet wide 24 feet long and 27.5 feet high, containing (a) a vertical Francis turbine with a hydraulic capacity of 178 cfs, manufactured by S. Morgan Smith and rated at 280 hp, and (b) a generator, manufactured by Northwestern Electric Equipment Company and rated at 168 kW; (6) and existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 1,448 MWH. The dam and existing project facilities are owned by the applicant.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Pubic Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI or by calling (715) 839–2621.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of

application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR THE TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (September 27, 1993 for Project No. 11426–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (November 10, 1993 for Project No. 11426–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to §4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (September 20, 1993 for Project Nos. 2561–003 and 2514–003; October 4, 1993 for Project Nos. 2347–001, 11142–000 and 2417–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (November 2, 1993 for Project Nos. 2561–003 and 2514–003; November 16, 1993 for Project Nos. 2347–001, 11142–000 and 2417–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 3, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19029 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93-13528T New Mexico-47]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 3, 1993.

Take notice that on July 30, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mesaverde Group underlying certain lands in the Rentz Area, Blanco Mesaverde Pool in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 4,467 acres, more or less, all of which are administered by the Bureau of Land Management. The recommended area is described as all of Sections 17–20 and 29–31 of Township 25 North, Range 3 West.

The notice of determination also contains BLM's findings that the referenced portion of the Mesaverde Group meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18913 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA94-1-32-000]

Colorado Interstate Gas Co.; Filing of Annual Purchased Gas Adjustment

August 3, 1993.

Take notice that on July 30, 1993, Colorado Interstate Gas Company (CIG) filed the following proposed tariff sheets reflecting a purchased gas adjustment ("PGA") change to become effective on October 1, 1993:

Second Revised Ninth Revised Sheet No. 7.1
Second Revised Ninth Revised Sheet No. 7.2
Second Revised Ninth Revised Sheet No. 8.1
Second Revised Ninth Revised Sheet No. 8.2

CIG states that the tariff rates underlying Second Revised Ninth Revised Sheet Nos. 7.1 through 8.2 reflect a net 3.23 cent decrease in the commodity rate for the G–1, P–1, SG–1, H–1, F–1 and PS–1 Rate Schedules.

CIG states that the subject PGA filing would be mooted in part, if the Federal Energy Regulatory Commission (Commission) approves CIG's compliance filing and offer of settlement in Docket No. RS92–4–000, for the restructuring of CIG's services pursuant to Order No. 636. Such restructuring, among other things, would eliminate CIG's current PGA tariff provisions effective October 1, 1993, and provide for the recovery, as transition costs, of CIG's Account 191 deferred purchase gas costs accrued through September 30, 1993.

CIG states that it anticipates its restructuring under Order 636 will be approved by the Commission effective October 1, 1993. However, CIG notes that it is necessary to make the instant PGA filing with the Commission: (1) to comply with the CIG's currently effective tariff; and (2) to quantify the deferred purchased gas cost balance in CIG's Account 191 related to the twelve months ended May 31, 1993 that, together with additional accruals for the period June to September, 1993, would establish the level of CIG's Account 191 transition costs to be recovered pursuant to CIG's Order 636 tariff.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before August 18, 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. 93–18911 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93-589-000]

Florida Gas Transmission Co. Request Under Blanket Authorization

August 3, 1933.

Take notice that on July 28, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–589–000 a request pursuant to § 157.205 of the Commission's Regulations to operate three existing delivery point facilities initially constructed under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA) under FGT's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

FGT proposes to operate (1) the Amoco Smith Point in Chambers County, Texas; (2) the Endevco Port Hudson Point in East Baton Rouge, Louisiana; and (3) the Corpus Christi Point in Nueces, Texas to expand the deliverability and utilize these points for the transportation of natural gas under part 284, for Subpart G service. These existing delivery points were constructed under Section 311(a) of the NGPA to provide Section 311(a) transportation services, it is indicated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18912 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93-61-000]

Hidroelectrica El Chocon S.A.; Application for Determination of Exempt Wholesale Generator Status

August 3, 1993.

On July 29, 1993, Hidroelectrica El Chocon S.A. (El Chocon), Suipacha 268,

pisa 12 (1355), Buenos Aires, Argentina, c/o Hidroinvest S.A., filed an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

El Chocon, an Argentine corporation, will be owned in part by Hidroinvest S.A., an Argentine corporation, which is owned in part by CMS Generation S.A., also an Argentine corporation. CMS Generation S.A. is a subsidiary of CMS Enterprises Company, which is a wholly-owned subsidiary of CMS Energy Corporation.

El Chocon will hold and operate two hydroelectric generating facilities, the El Chocon and the Arroyito, on the Limay River in between the Nequen and Rio Negro Provinces, Republic of Argentina, South America. El Chocon is a 1200 MW hydroelectric plant consisting of six 200 MW turbogenerators with associated equipment and one dam. Arroyito is a 120 MW hydroelectric plant consisting of three 40 MW gensets with associated equipment and one dam.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before August 23, 1993, and must be served on the applicant (c/o Rodger A. Kershner, Esq., CMS Enterprises Company, Fairlane Plaza South, 330 Town Center Drive, suite 1100, Dearborn, Michigan 48126). 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. 93–18907 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–599–000]

Northern Natural Gas Co.; Request Under Blanket Authorization

August 3, 1993.

Take notice that on July 30, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP93–599–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point to Hutchinson Utilities Commission (Hutchinson Utilities) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authorization to construct and operate a delivery point in McLeod County, Minnesota to deliver gas, transported by Northern, to Hutchinson Utilities for use in a new power plant. Northern estimates the peak day volumes to be 9,000 Mcf and annual volumes to be 2,520,000 Mcf. Northern states that it would also construct and operate 2.1 miles of 6-inch pipeline under § 157.208(a) of the Commission's Regulations to provide the requested transportation service to Hutchinson Utilities.

Northern asserts that the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18908 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–3–55–000]

Questar Pipeline Co.; Rate Changes

August 3, 1993.

Take notice that on July 30, 1993, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Twenty-Sixth Revised Sheet No. 12, with a proposed effective date of September 1, 1993.

Questar states that the purpose of this filing is to adjust the purchased gas cost under Questar's sale-for-resale Rate Schedule CD–1 effective September 1, 1993.

Questar states that the Twenty-Sixth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.15079/Dth which is $1.19515/Dth lower than the currently effective date of $3.34594Dth. The demand base cost of purchased gas remained unchanged at $0.00000/Dth.

Questar states that a copy of the filing has been provided to Mountain Fuel Supply Company, the Utah Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 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. 93–18910 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–587–000]

Texas Eastern Transmission Corp.; Request Under Blanket Authorization

August 3, 1993.

Take notice that on July 27, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed a prior notice request with the Commission in Docket No. CP93–587–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase the capacity of a York County, Pennsylvania, metering and regulating station in order to make natural gas deliveries to Columbia Gas of Pennsylvania (CPA), a local distribution company, under Texas Eastern's blanket certificate issued in

Docket No. CP82–535–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Texas Eastern proposes to install a 6-inch hot tap and dual 6-inch orifice meters on its 36-inch pipeline in York County in order to deliver a maximum daily quantity of 170,000 dekatherms of natural gas on an interruptible basis to CPA under Texas Eastern's FERC Rate Schedule IT–1. Texas Eastern states that the natural gas volumes it would deliver to CPA are within CPA's certificated entitlements. Texas Eastern further states that CPA would reimburse Texas Eastern for the estimated $652,000 modification cost of this proposal. Texas Eastern also states that it would modify the facilities herein without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18909 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4688–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1057.06; NSPS for Stationary Sources, Sulfuric Acid Plants (subpart H); was approved 06/23/93; OMB No. 2060–0041; expires 06/30/96.

EPA ICR No. 1289.03; Wood Preservatives, Submission of Information Regarding Arsenic Exposure Levels in Wood Treatment Plants; was approved 06/23/93; OMB No. 2070–0081; expires 06/30/96.

EPA ICR No. 1080.08; National Emission Standards for Hazardous Air Pollutants, Benzene Emissions from Benzene Storage Vessels, and Coke Byproduct Recovery Plants; was approved 06/25/93; OMB No. 2060–0185; expires 06/30/96.

EPA ICR No. 1596.02; Significant New Alternatives Policy Regulations under Title VI of the Clean Air Act Amendments of 1990; was approved 06/28/93; OMB No. 2060–0226; expires 06/30/96.

EPA ICR No. 1646.01; 1993 Screener Questionnaire for the Industrial Laundries Industry; was approved 07/05/93; OMB No. 2040–0163; expires 06/30/96.

EPA ICR No. 1086.03; NSPS for Onshore Natural Gas Processing Plants/Equipment Leaks of VOC and Emissions of SO2-Reporting and Recordkeeping for subparts KKK/LLL; was approved 07/06/93; OMB No. 2060–0120; expires 07/31/96.

EPA ICR No. 1642.01; Special Data Call-in Notice to Certain Pesticide Registrants Requiring Replacement of Craven Laboratory Generated Data Previously Submitted in Support of Existing Tolerances or Registration; was approved 07/08/93; OMB No. 2070–0130; expires 07/31/96.

OMB Disapprovals

EPA ICR No. 1638.01; FC33 Surface Protection Listing; was disapproved by OMB 06/08/93.

EPA ICR No. 1639.01; Water Quality Guidance for the Great Lakes System; was disapproved by OMB 06/17/93.

EPA ICR 0976.06; 1993 Hazardous Waste Report; was disapproved by OMB 06/25/93.

EPA ICR No. 1520.02; Reporting and Recordkeeping for Suspended and Canceled Pesticides (proposed amendment); was disapproved by OMB 06/25/93.

Dated: August 3, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–18970 Filed 8–6–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4690–1]

Public Water Supply Supervision Program; Program Revision for the State of Oregon

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Oregon is revising its approved State Public Water Supply Supervision Primacy Program. Oregon has adopted drinking water regulations for lead and copper. EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted September 8, 1993 to the EPA Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 8, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective September 8, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Drinking Water Section, Oregon Health Division, 800 NE. Oregon Street, Portland, Oregon 97232; and Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA, Region 10, Ground Water and Drinking Water Branch, at the Seattle address given above; telephone (206) 553–1890.

Dated: July 27, 1993.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 93–18976 Filed 8–6–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4690–3]

Louisiana; Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Louisiana for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Louisiana applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Louisiana's MSWLF application and has made a tentative determination that all portions of Louisiana's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Louisiana's application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has scheduled a public hearing on this determination and will hold the hearing if a sufficient number of people express interest in participating in the hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice. If a public hearing is held, it will take place on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

DATES: All comments on Louisiana's application for a determination of adequacy must be received by the close of business on September 8, 1993. If a public hearing is held, it will be scheduled for September 23, 1993 in Baton Rouge, Louisiana. State of Louisiana officials will participate in the hearing, if held by EPA.

ADDRESSES: Copies of Louisiana's application for adequacy determination are available during normal business hours for inspection and copying at the following addresses: Louisiana Department of Environmental Quality, 7290 Bluebonnet Drive, Baton Rouge, Louisiana, William J. Mollere, 504–765–0249; U.S. EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas, Robin Moran, 214–655–6760. Written comments should be sent to U.S. EPA Region 6, Robin Moran (6H–HW), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Robin Moran, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, 214–655–6760.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an adequate program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Louisiana

On May 17, 1993, Louisiana submitted an application for adequacy determination. EPA has reviewed Louisiana's application and has tentatively determined that all portions of Louisiana's subtitle D program will ensure compliance with the revised Federal Criteria.

Louisiana promulgated solid waste regulations on February 20, 1993, (title 33, part VII, Solid Waste). On June 20, 1993, the State proposed a few minor

amendments to these regulations (title 33, part VIII, chapters 3, 5, and 7). These amendments are currently undergoing public comment at the State level and are expected to be finalized by September 20, 1993. The proposed amendments pertain to the following:

1. The financial assurance mechanism must provide sufficient funding for corrective action of known releases.

2. Final assurance must be provided within 120 days after the corrective action remedy is selected.

3. The daily cover requirement for industrial solid waste (Type I) may be waived by the administrative authority only if the permit owner can demonstrate that the nature of the waste is such that daily cover is not required; however, the requirement for daily cover may not be waived in a facility which receives residential or commercial solid waste (Type II).

4. Quality assurance procedures must be followed in the construction and installation of liner systems, leachate control systems, leak-detection and cover systems.

5. The permit owner must submit a new or amended closure plan and post-closure plan no later than October 9, 1993, or the date of the initial receipt of waste, whichever is later.

Louisiana's liner design requires the use of a composite liner consisting of a geomembrane liner at least 30-mil thick installed directly above and in uniform contact with a three-foot thick recompacted clay liner having a hydraulic conductivity no greater than 1×10^{-7} cm/sec; the use of a secondary liner is allowed below and in addition to the required composite liner, upon approval by the administrative authority. Any geomembrane liner used must be compatible with the solid waste and leachate in the unit.

EPA has tentatively determined that Louisiana's application, including the above proposed amendments, is consistent with the Federal Criteria and will make a final determination of adequacy after the amendments have been adopted by the State.

The public may submit written comments on EPA's tentative determination until September 8, 1993. Copies of Louisiana's application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice. If there is sufficient public interest, the Agency will hold a public hearing on its tentative determination on September 23, 1993 at 10 a.m. at the Louisiana Department of Environmental Quality in Baton Rouge, Louisiana. Comments can be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

EPA will consider all public comments on its tentative determination received during the public comment period and during the public hearing, if held. Issues raised by those comments may be the basis for a determination of inadequacy for Louisiana's program. EPA's final determination notice will include a summary of the reasons for the final determination and a response to all major comments.

Louisiana's solid waste program is not enforceable on Indian lands.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance with Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 30, 1993.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 93–18971 Filed 8–6–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–996–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

The counties of Adair, Buchanan, Buena Vista, Carroll, Cass, Clay, Dallas, Green, Hamilton, Marshall, Mills, Muscatine, Sioux, Taylor, Union, Warren, and Worth for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–18950 Filed 8–6–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Rush and Russell counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–18946 Filed 8–6–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-1000-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA-1000-DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Jefferson County for Individual Assistance. (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-18948 Filed 8-6-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1000-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA-1000-DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The county of Ellsworth for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-18948 Filed 8-6-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1001-DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA-1001-DR), dated July 26, 1993, and related determinations.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota dated July 26, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 26, 1993:

The counties of Benson, Grand Forks, Griggs, McLean, Mercer, Nelson, Oliver, Ramsey, Sheridan, Stark, Steele, Traill, Walsh, and Wells for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-18947 Filed 8-6-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-994-DR]

Wisconsin; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA-994-DR), dated July 2, 1993, and related determinations.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin dated July 2, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1993:

The county of Outagamie for Public Assistance. (Already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-18951 Filed 8-6-93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

William R. Bullock, Sr.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. William R. Bullock, Sr., Dardanelle, Arkansas; to acquire an additional 2.28 percent of the voting shares of Bank of Dardanelle Banckshares, Inc., Dardanelle, Arkansas, for a total of 40.08 percent, and thereby indirectly acquire Bank of Dardanelle, Dardanelle, Arkansas.

Board of Governors of the Federal Reserve System, August 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18936 Filed 8-6-93; 8:45 am]

BILLING CODE 6210-01-F

Cardinal Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 2, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Cardinal Bancshares, Inc., Lexington, Kentucky; to acquire Mutual Federal Savings Bank, Somerset, Kentucky, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

2. PNC Bank Corp, Inc., Pittsburgh, Pennsylvania; to acquire United Federal Bancorp, State College, Pennsylvania, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Carolina First Corporation, Greenville, South Carolina; to acquire First Sun Mortgage Corporation, Columbia, South Carolina, and thereby engage in mortgage loan servicing operations as well as the business of originating mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to acquire substantially all of the assets of Premium Services Corporation of Columbia, Columbia, South Carolina, devoted to the insurance premium finance business and thereby engage in making and servicing consumer and commercial loans pursuant to § 225.25(b)(1); and providing data software services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18937 Filed 8-6-93; 8:45 am]

BILLING CODE 6210-01-F

Edgemark Financial Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Edgemark Financial Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, Edgemark Financial Services, Inc., Countryside, Illinois, in providing securities brokerage services in connection with investment advisory services pursuant to § 225.25(b)(15)(ii) of the Board's Regulation Y.

2. Erie Bancorp, Inc., Erie, Illinois; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18939 Filed 8-6-93; 8:45 am]

BILLING CODE 6210-01-F

Grupo Financiero Prime Internacional S.A. de C.V., Cuauhtemoc, Mexico; Application to Engage in Nonbanking Activities

Grupo Financiero Prime Internacional S.A. de C.V., Cuauhtemoc, Mexico (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to acquire 100 percent of the voting shares of IRC Investments Inc., Rowayton, Connecticut (Company), and thereby engage in the following securities-related activities:

(1) Providing securities brokerage services and acting as an investment or

financial advisor, both separately and on a combined basis;

(2) Buying and selling in secondary market trading all types of securities on the order of investors as a "riskless principal";

(3) Acting as adviser in leasing real or personal property;

(4) Providing foreign exchange advisory services; and

(5) Arranging commercial real estate equity financing and providing related advisory services.

Applicant would conduct the proposed activities throughout the United States and the world. Applicant does not presently engage, either directly or indirectly, in any nonbanking activities in the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806, January 5, 1984.

The Board has previously approved, by regulation, the proposed securities brokerage, investment and financial advisory, real and personal property leasing advisory, foreign exchange advisory, and commercial real estate financing activities. *See* 12 CFR 225.25(b)(4), (5), (14), (15), (17). The Board also has previously approved, by order, the proposed "riskless principal" activities. *See J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). Applicant also contends that the Board has previously approved the proposed commercial real estate financing advisory activities. *See Southeast Banking Corporation*, 69 Federal Reserve Bulletin 564 (1983).

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition, and by allowing Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 1, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, August 3, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-18935 Filed 8-6-93; 8:45 am]

BILLING CODE 6210-01-F

National Penn Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 2, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 100 percent of the voting shares of Chestnut Hill National Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Centura Banks, Inc.*, Rocky Mount, North Carolina; to acquire 100 percent of the voting shares of Canton Savings Bank, SSB, Canton, North Carolina.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Community Bancshares, Inc.*, Blountsville, Alabama; to acquire 100 percent of the voting shares of City and

County Bank of McMinn County, Athens, Tennessee.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Edmonson Bancshares, Inc., Brownsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Edmonson County, Brownsville, Kentucky.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Sleepy Eye Bancorporation, Inc., Sioux Falls, South Dakota; to acquire 100 percent of the voting shares of First Security Bank of Benson, Benson, Minnesota, a *de novo* bank.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community First Bancorp, Inc., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Laramie, Laramie, Wyoming; American National Bank of Cheyenne, Cheyenne, Wyoming; Financial Partners, Inc., Worland, Wyoming, and thereby indirectly acquire Stockgrowers State Bank, Worland, Wyoming.

G. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Whitman Bancorporation, Inc., Colfax, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Whitman, Colfax, Washington.

Board of Governors of the Federal Reserve System, August 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18938 Filed 8-6-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Update of the Clinical Practice Guideline for Cataract in Adults; Management of Functional Impairment

The Agency for Health Care Policy and Research announces that it is inviting nominations of qualified individuals to serve on a panel as the co-chairperson and as panel members to update a clinical practice guideline that was released during the first quarter of 1993, Cataract in Adults: Management of Functional Impairment. Selected individuals will replace one-third of the existing panel members and expand the panel's members to disciplines not currently represented in the panel.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c–6 and 1320b–12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410) enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines. In keeping with its legislative mandates, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Based on the guidelines produced, AHCPR oversees development of medical review criteria, standards of quality, and performance measures.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;
4. Include information on risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 913 of the Act (42 U.S.C. 299b–2) describes two mechanisms through which AHCPR may arrange for development of guidelines: 1. Panels of qualified health care experts and consumers may be convened; and 2. contracts may be awarded to public and private non-profit organizations. The AHCPR has elected to use the panel process for development and updating of the clinical practice guideline for Cataract in Adults: Management of Functional Impairment.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the AHCPR Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Panel Nominations

The panel that will update the guideline for Cataract in Adults: Management of Functional Impairment will assess new research in selected areas previously reviewed, review current literature on new treatments, and assess research in management of functional impairment due to cataract in adults. The panel will consist of two co-chairpersons and approximately fifteen to seventeen other members. To assist in identifying members for the panel, AHCPR is requesting recommendations from a broad range of interested individuals and organizations. To replace the expertise of the retiring members and expand representation, AHCPR is especially interested in receiving nominations of: (1) vision scientists; (2) cataract surgeons; (3) optometrists; (4) physicians representing primary care, including geriatricians, family practitioners, and internists; (5) nurses; (6) anesthesiologists and anesthetists; (7) epidemiologists who are familiar with ocular diseases or their treatments; (8) health services researchers or health economists; and (9) consumers with

pertinent experience or information, either as a patient, family member, or friend of a cataract patient. Nominees should have no substantial financial interests or professional affiliations that would significantly jeopardize the integrity of the guideline development process or final products.

This notice requests nominations of qualified individuals to serve on the panel as members or as panel co-chairpersons. The functions of the panel co-chairpersons are critical to the process of developing guidelines. Co-chairpersons provide leadership regarding methodology, literature review, panel deliberations, and preparation of the final products. Nominations for co-chairpersons and members should address the criteria specified below, which AHCPR will use in making panel selections.

- Relevant training and clinical experience;
- Demonstrated interest in quality assurance and research on management of functional impairment due to cataract in the adult;
- Commitment to the need to produce clinical guidelines;
- Recognition in the field with a record of leadership in relevant activities;
- Broad public health view of the utility of particular procedure(s) or clinical service(s);
- Demonstrated capacity to respond to consumer concerns;
- Prior experience in developing guidelines for the clinical condition in question; and
- No substantial financial interests or professional affiliations that would significantly impair the scientific integrity of the guidelines or final products.

Nominations of individuals who are from minority population groups, and individuals who have less than full-time academic appointments are encouraged.

When the panel co-chairpersons have been appointed, nominations for members of the panel will be submitted to the co-chairpersons for review and consideration. The co-chairpersons will, in turn, recommend proposed panel members to AHCPR. Appointments of the panel members will be made by the Administrator, AHCPR, after review of proposed members' qualifications and the overall composition of the panel to ensure representation of a range of background expertise and experience. In making panel selections, AHCPR will maintain, to the extent possible, a balance between individuals selected from academic settings and individuals selected without full-time academic appointments. Also, at least two other members of this panel shall be individuals who do not derive their primary source of revenue directly from the performance of procedures discussed in this guideline.

Individuals selected for the guideline update panel will be asked to serve from one to three years.

Nominations should indicate whether the individual is being recommended to serve as a panel co-chairperson or to serve as a panel member. The term of appointment for panel co-chairpersons is up to three years. Each nomination must include a copy of the individual's curriculum vitae or résumé, plus a statement of the rationale for the specific nomination. To be considered nominations must be received by August 30, 1993, at the following address: Mikalix and Company, Attn: David Schactman, 404 Wyman Street, suite 375, Waltham, Massachusetts 02154–1210, Phone: (617)290–0090, Fax: (617)290–0180.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Fact Sheet, "AHCPR-Supported Clinical Practice Guidelines," dated April 1993. This document describes AHCPR's activities with respect to clinical practice guidelines, including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Also, information can be obtained by contacting Kathleen A. McCormick, Ph.D., R.N., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, 6000 Executive Boulevard, suite 310, Rockville, Maryland 20852.

Dated: July 29, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–18892 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–90–U

Agency for Health Care Policy and Research; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during August 1993:

Name: Subcommittee on AHCPR Clinical Practice Guidelines: Screening for Colorectal Cancer.

Date and Time: August 17–18, 1993, 9 a.m.

Place: Executive Office Center, 2101 E. Jefferson Street, suite 603, Conference Room, Rockville, MD 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Office of the Forum for Quality and Effectiveness in Health Care, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. The purpose of this contract is to develop and update clinical practice guidelines and to develop medical review criteria, standards of practice, and performance measures on screening for colorectal cancer.

Agenda: The session of this Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Barbara Fleming, M.D., Ph.D., Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, suite 310, 6000 Executive Blvd., Rockville, MD 20852, (301) 594–4015.

Note: Due to unforeseen circumstances, arrangements for this meeting were delayed. Consequently, more timely notification was not possible.

Dated: July 28, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–18891 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–90–U

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 407]

Health Activities Recommendation Panel Site-Specific Health Activities

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement/grant program to conduct site-specific health activities related to human exposure to hazardous substances at hazardous waste sites or releases. The activities

will be conducted in communities near hazardous waste sites for which ATSDR (or a state under cooperative agreement) has prepared a preliminary public health assessment, public health assessment, public health advisory, or health consultation, and Health Activities Recommendation Panel (HARP) has determined that specific public health actions are warranted. Emphasis will be given to the urgent Public Health Concern and Public Health Concern/Hazard sites listed in Appendix A.

Note: This announcement replaces a previously announced initiative, Program Announcement No. 230—State Health Departments and Public Health Agencies to Conduct Site-Specific Health Activities, which was published in the **Federal Register** on June 9, 1992, [57 FR 24500].

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized in sections 104(i) (7) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i) (7) and (15)].

Eligible Applicants

Eligible applicants are the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including state universities, must establish that they meet their respective state's legislature definition of a state entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $750,000 is expected to be available in FY 1994 to fund an estimated 10 awards. It is expected that the awards will range from $50,000 to $100,000. Awards are funded for a 12-month budget period within a project period of up to 2 years.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of the program is to assist public health agencies in conducting site-specific health activities recommended by HARP to assess the public health impact of human exposure to hazardous substances in communities located near hazardous waste sites or releases.

Program Requirements

Applicants *must* specify the type of award for which they are applying, either grant or cooperative agreement. These two types of Federal assistance are explained below.

A. Grants

In a grant, the applicant will be required to conduct the proposed study without substantial programmatic involvement from the funding agency. Therefore, the grantee's application should be presented in a manner that demonstrates the applicant's ability to conduct the study. Applications should include a protocol which will undergo scientific peer review as required by ATSDR. The applicant's protocol should contain consent forms and questionnaires, baseline morbidity and mortality information, procedures for collecting biological and environmental specimens and for conducting laboratory analysis of the test specimens, statistical and epidemiologic analysis of the study information, and a description of the safeguards for protecting the confidentiality of individuals on whom data are collected. The applicant must include in the application a methodology for ongoing community interaction/involvement.

By comparison, the activities of the recipient and the ATSDR relating to a cooperative agreement are different and are described in paragraph B.

B. Cooperative Agreements

In a cooperative agreement, the funding agency will assist the collaborator in conducting the study. The application should be presented in a manner that demonstrates the applicant's ability to address the health study in a collaborative manner with the funding agency.

The cooperative activities of the recipient agency and the funding agency are:

1. Recipient Activities

a. Recipient will develop a protocol; and conduct the recommended study. This protocol will undergo scientific peer review as required by ATSDR.

b. Recipient is required to provide proof by citing a state code or regulation or other state pronouncement under authority of law, that medical information obtained pursuant to the agreement will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

c. Recipient will develop a mechanism for ongoing interaction with the affected community.

2. ATSDR Activities

a. ATSDR will provide assistance in both the planning and implementation phases of the field work called for under the study protocol.

b. ATSDR will provide consultation and assist in monitoring the data and specimen collection.

c. ATSDR will participate in the study analysis.

d. ATSDR will collaborate in interpreting the study findings.

e. ATSDR will conduct technical and peer review.

Evaluation Criteria

The review for scientific and technical merit by an objective review group will be based on the following criteria; however, grant applications and cooperative agreement applications will be given separate consideration:

A. Scientific and Technical Review Criteria of New Applications

1. Proposed Program—50%

The extent to which the applicant's proposal and protocol addresses (a) the study as recommended by HARP; (b) the approach, feasibility, adequacy, and rationale of the proposed project design; (c) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the Purpose section of this announcement and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; (d) the proposed project timeline, including clearly established project objectives for which progress toward attainment can and will be measured; (e) the proposed community involvement strategy; and (f) the proposed method to disseminate the results to state and local public health officials, community residents, and

other concerned individuals and organizations.

2. Program Personnel—30%

The extent to which the proposal has described the (a) qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership, and (b) the competence of associates to accomplish the proposed activity, their commitment, and time they will devote.

3. Applicant Capability and Coordination Efforts—20%

The extent to which the proposal has described (a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community; and (c) the suitability of facilities and equipment available or to be purchased for the project.

4. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

B. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;
2. Objectives for the new budget period are realistic, specific, and measurable;
3. Proposed changes in described objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and
4. The budget is clearly justified and consistent with the intended use of grant/cooperative agreement funds.

Executive Order 12372

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.161, Health Programs for Toxic Substances and Disease Registry.

Other Requirements

A. Protection of Human Subjects

This program requires research on human subjects, therefore, all applicants must comply with Pub. L. 42 U.S.C. 289 and Department of Health and Human Services regulations 45 CFR Part 46 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

B. Animal Welfare

If the proposal involves research on animals, the applicant must comply with the "PHS Policy Statement on Humane Care on use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for the Protection from Research Risks at the National Institutes of Health.

C. Cost Recovery

The CERCLA, as amended by the SARA, provides for the recovery of costs incurred for health assessments and health effects studies at each Superfund site from potentially responsible parties. The recipient will agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final Financial Status Report (FSR). If there is litigation, a claim, negotiation, audit, or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

D. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

E. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the recipient of the grant or cooperative agreement and the third party.

The written agreement shall, at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning peer review and technical review as required by ATSDR, release of data, ownership of data, and the arrangement for copyright when publications, data or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.
2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.
3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work.
4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be

followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

5. State that the contractor must comply with all peer review and technical review requirements.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall, therefore, retain sufficient rights and control to the grantee to enable it to fulfill this responsibility.

Application and Submission Deadlines

The original and two copies of the application Form PHS 5161–1 must be submitted to Henry Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, Georgia 30305, in accordance with the submission schedule below.

This is a continuous announcement and the proposed timetable for receiving new applications and making awards is shown below:

Submission deadlines new applications	Review dates	Award dates
September 15, 1993.	October 15, 1993.	November 30, 1993.
January 15, 1994.	February 15, 1994.	March 31, 1994.
April 15, 1994	May 16, 1994	June 30, 1994.
July 15, 1994	August 15, 1994.	September 30, 1994.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications

Applications which do not meet the criteria in A. above are considered late applications. Late applications will not be considered in the current competition and may either be returned to the applicant or held for the next review cycle.

Where To Obtain Additional Information

Additional information on application procedures, copies of application forms, other material, and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mail Stop E–13, Atlanta, Georgia 30305, telephone (404) 842–6797. Programmatic assistance may be obtained from Dr. Jeffrey A. Lybarger, Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333, telephone (404) 639–6200.

Please refer to announcement number 407 when requesting information and submitting an Application.

Potential Applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 2, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances Disease Registry.

Appendix A—Urgent Public Health Concern

No Sites Pending at Present

Public Health Concern/Hazard

Allied Paper, MI
American Creosote Works, Inc, FL
Artic Surplus, AK
Bayou Bonfouca, LA
Big River Mine Tailings-Deslog
Blackburn-Union Privileges Site, MA
C & D Recycling, PA
Chemical Sales, CO
Combustion Inc, LA
Cryo-Chem Inc, PA
Dublin Water, PA
E.I. Dupont, NJ
Endicott Village Wellfield, NY
Greenwood Chemical, VA
Groton Gratuity, MA
Groveland Wells, MA
Heleva Landfill, PA
Iron Horse Park, MA
Kohler Company Landfill, WI
Lord Shope Landfill, PA
Moses Lake Wellfield, WA
Nease Chemical, OH
Nutmeg Valley Road, CT
New Bedford Harbor, MA
Ottawa Radiation, IL
Petrochemical Recycl Corp/Ekotek, UT
Powell Road Landfill, OH
Prestolite Battery Site, IN
PSC Resources, MA
Roebling Steel Company
Sangamo/12 Mile Creek/Hartwell, SC
Savage Municipal Water Supply, NH
Shaffer Equipment Company, WV
Sheboygan Harbor and River, WI
Smeltertown, CO
Spickler Landfill, WI
Spiegelberg & Rasmussen Dump, MI
Stringfellow, CA
Tibbetts Road, NH
U.S. Smelter and Lead Refinery, IN
United Heckathorn, CA
United Creosoting Company, TX

Potential/Indeterminate Public Health Threat

Anderson Development, MI
East Helena Smelter, MT
General Electric Co/Shepherd Farm, NC
GSX, SC
Jackson Township Landfill, NJ
Lemberger Transport & Recycling Landfill, WI
Marine Shale Processors, Inc, LA
Motor Wheel, MI
Munisport Landfill, FL
Navajo-Desiderio & Navajo Brown Uranium Mine, NM
North Sea Municipal Landfill, NY
Precision Plating, CT
Reilly Tar and Chemical, IN
Welsh Road Landfill, PA

[FR Doc. 93–18919 Filed 8–6–93; 8:45 am]
BILLING CODE 4160–70–P

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Announcement Number 354]

Cooperative Agreements for Lead Poisoning Prevention With States in Collaboration With Local Health Departments Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program with state departments of health and/or appropriate agencies of state government such as departments of labor or environment, to build state capacity for conducting lead poisoning prevention programs through local health departments. This cooperative agreement will assist the recipient state health, labor, or environment departments in working with or through local health departments to develop programs to prevent diseases resultant from lead exposure in small businesses.

This cooperative agreement program will significantly strengthen the public health infrastructure by demonstrating a role for local health departments in the occupational health promotion and prevention activities in coordination with state agencies.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health, and Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under Section 301(a) of the Public Health Service Act, [42 U.S.C. 241(a)], as amended, and the Occupational Safety and Health Act of 1970, section 20(a) [29 U.S.C. 669(a)].

Eligible Applicants

Assistance will be provided to the official state or territorial health departments, and/or state departments of labor or environment. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments and territories.

Note: State departments of labor and/or environment with occupational safety and health jurisdiction must apply *in collaboration with* their state or territorial health department.

Applicants must have regulations for laboratory-based reporting of blood lead levels consistent with current CDC Surveillance Guidelines (see section Where to Obtain Additional Information) and active Adult Blood Lead Epidemiology and Surveillance programs (ABLES).

Availability of Funds

Approximately $110,000 is available in FY 1993 to fund one to two awards. It is expected that the average award will range from $55,000 to $110,000. It is expected that the award(s) will begin on or about September 30, 1993, and are made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to assist state departments with responsibilities for occupational health, in collaboration with local health departments, to develop effective models for intervention in the prevention of lead poisoning. In particular, the focus for the local health departments should be on lead-using industries covered under the OSHA Lead Standard for General Industry (29 CFR 1025.1910), such as radiator repair shops, in their localities to determine methods for effective interventions to control lead exposures in small business environments. An effective intervention strategy developed by the program will serve as a model for local health departments nationally.

Goals

The Lead Poisoning Prevention Program with States in Collaboration with Local Health Departments has the following goals:

1. Develop a model for intervention related to lead poisoning at the local level for small businesses;
2. Build occupational disease prevention capacity via state health departments or other appropriate agencies at the local level;
3. Design, field test, demonstrate, and evaluate the effectiveness of the intervention.

Program Requirements

Applicants must focus their efforts at the local health department level and on small businesses that use lead, preferably radiator repair shops, where control technology exists to limit lead exposure. Throughout the project period, recipients will work in cooperation with NIOSH towards achieving these goals.

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for activities under A., below, and CDC/NIOSH will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop an effective working relationship with local health department(s).
2. Revise and refine the methodology for the proposed intervention and evaluation as described in the program application.
3. Implement the revised and approved intervention and evaluation.
4. Conduct a thorough evaluation of the model program.

B. CDC/NIOSH Activities

1. Provide technical assistance and consultation in the implementation of the model program throughout the project period.
2. Provide assistance in the conduct of field investigations and intervention efforts, at the recipient's request.
3. Provide guidelines for evaluating the intervention activities and technical assistance for the evaluation.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The clarity, feasibility, and scientific soundness of the approach. The following will be specifically considered: (30%)
   a. Who will be targeted for the intervention?
   b. How will the intervention be conducted and by whom?
   c. How will the intervention be evaluated?
   d. How and when will the data be analyzed?
2. The extent to which the proposed activities are likely to result in development and execution of a model intervention strategy to prevent and reduce occupational lead poisoning in small businesses through local health departments (as defined in the Program Requirements section.) (25%)
3. The extent to which the proposed schedule for accomplishing each of the project activities, and the methods for evaluating each activity, are clearly defined and appropriate. (15%)
4. The extent to which the proposed activities are likely to result in the use of the model program by other local health departments. (15%)
5. The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal. (10%)
6. The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies. (5%)
7. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other then federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state

process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, no later than 30 days after the deadline date for new and competing awards. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health Reporting System Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects involving the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission And Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before August 20, 1993. The program announcement and application kit were sent to all eligible applicants on June 30, 1993.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in either current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description and information on application procedures, an application package, and business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, (404) 842–6814.

Programmatic technical assistance may by obtained from Janie Gittleman, Ph.D, or Paul Seligman, M.D., National Institute for Occupational Safety and Health, Division of Surveillance, Hazard Evaluations, and Field Studies, Robert A. Taft Laboratory, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 841–4353.

Please refer to Announcement Number 354 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 3, 1993.

Phillip W. Strine,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–18915 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–19–P

National Institute for Occupational Safety and Health

[Program Announcement Number 353]

Cooperative Agreement for Research, Design, and Development of Concurrent Engineering Systems and Technologies

Introduction

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement to foster scientific collaboration and cooperation for scientific technologies of concurrent engineering and occupational safety and health. Concurrent engineering is defined as an integrated, systematic approach to the design of products and/or processes from conceptualization through completion. Concurrent engineering emphasizes integration of available resources, and utilizes computer-assisted, networked, multimedia, communication environments to facilitate information sharing and transfer. This cooperative agreement will significantly strengthen occupational public health research and intervention strategies by testing the feasibility of applying the principles of concurrent engineering to improving worker safety and health. In turn, the technologic practice of concurrent engineering will be enhanced through the inclusion of the principles of disease and injury safety strategies.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section Where to obtain additional information.)

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a)] and sections 301 [42 U.S.C. 241] and 317 [42 U.S.C. 247(b)] of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide

agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for this cooperative agreement.

Availability of Funds

Approximately $230,000 is available for FY 1993 to fund one cooperative agreement. It is expected that the award will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting the project objectives and on the availability of funds.

Purpose

The purpose of this cooperative agreement is for the recipient to design, implement, and evaluate two projects which merge the scientific principles of concurrent engineering and occupational safety and health prevention efforts. The following are some examples of potential applications:

- Development and integration of real-time, on-line electronic surveillance systems including automated coding subsystems, for occupational injuries and diseases.
- Development of advanced protective equipment using novel telemetry, microelectronics, sensor, and heads-up display technologies.
- Application of virtual reality systems and simulators to aid in equipment design, testing, certification, and personnel training.
- Development and implementation of new and emerging technologies such as robotics, intelligent sensors, expert systems, and ergonomics.
- Development of advanced laboratory protocols for research design, testing, protective equipment certification, and personnel training.
- Development and implementation of project management systems.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC/NIOSH shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Conduct research, design, and implement concurrent engineering technologies and methodologies for two engineering design projects.
2. Develop an engineering project description or plan for each project, including: (a) a system for ascertaining the ongoing progress of the project and (b) the exact method for inclusion of OSH principles.
3. Revise and refine the design of the two projects.
4. Implement the revised and approved activity.
5. Develop a method to evaluate the degree of success of the cooperative agreement.

B. CDC/NIOSH Activities

1. Provide technical assistance and consultation in the implementation of the two projects in the areas of occupational safety and health.
2. Collaborate with recipient on the on-going progress and method of including OSH principles.
3. Collaborate with recipient on the design of protocols.
4. Provide assistance on the evaluation of the project.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Demonstrated expertise in the principles and methodologies of concurrent engineering. (30%)
2. Demonstrated ability to apply concurrent engineering principles to complex problems and obtain appropriate and effective solutions. (15%)
3. Quality and completeness of the plan and approach, including a proposed time schedule, for accomplishing the activities and objectives for this cooperative agreement. (30%)
4. The qualifications and time commitment of the proposed staff, type and quality of facilities and equipment, and administrative support to be applied to the activities of this cooperative agreement. (25%)
5. Budget. (not scored)

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) number of this program is 93.262.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, room 300, Atlanta, Georgia 30305, on or before September 9, 1993.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Services as proof of timely mailing. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 353. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–

6814. Programmatic technical assistance may be obtained from Richard Metzler, National Institute for Occupational Safety and Health, Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888, telephone (304) 284–5722.

Please refer to Announcement Number 353 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 3, 1993.

Phillip W. Strine,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–18928 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–19–P

[Program Announcement No. 350]

National Institute for Occupational Safety and Health; Occupational Health; Nurses in Agricultural Communities; Notice of Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements for programs to prevent occupational illness and injury in workers employed in agriculture. These programs will conduct surveillance and develop intervention strategies to reduce injury and disease rates among Americans engaged in agricultural work and will develop more complete information on agricultural injury and disease problems. Nurses will be used in an effort to identify, report, and prevent certain sentinel health events related to agricultural hazards.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000 see the section Where to Obtain Additional Information.)

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and the Public Health Service Act section 301(a), (42 U.S.C. 241(a)), as amended.

Eligible Applicants

Assistance will be provided only to the official health departments of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments.

These programs are designed to link state and territorial health departments to agricultural areas and, in some instances, specifically to local hospitals.

Availability of Funds

Approximately $176,000 is available in FY 1993 to fund 1 to 2 awards. It is expected that the average award will be approximately $88,000, ranging from approximately $60,000 to $100,000. It is expected that the awards will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of the Occupational Health Nurses in Agricultural Communities (OHNAC) program is to conduct ongoing, responsive surveillance of agriculture-related disease and injury through the employment and placement of nurses (preferably with occupational health training) in agricultural communities. These nurses will identify and report agriculture-related disease and injury cases to the state or territorial health departments, conduct or participate in the follow-up investigations of sentinel health events, and provide instruction in local high school vocational agricultural classes and health classes. They will provide disease and injury prevention information to individuals and families at risk with the assistance of county extension agents, home economists, the state or territorial health department or other community resources when appropriate. They will also assist the local and state or territorial health department in collecting other agricultural job-related fatality, safety and health data, and in conducting community evaluations of occupational agriculture risk factors.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC/NIOSH shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop, implement and maintain a community-based system of reporting agricultural job-related diseases and injuries through the employment and assignment of nurses (preferably nurses with occupational health training) in agricultural locales that convey the agricultural representativeness of the state and that would most benefit from such a nurse assignee. Maintain regular supportive contact with the assignees.

2. Select targeted sentinel health incidents associated with the work that agricultural workers and their families perform: (a) Acute pesticide poisonings and dermatoses; (b) bacteria-related diarrheal diseases and tuberculosis among migrant agricultural workers and their children; (c) agricultural worksite- and farm implement-related amputations, fatalities, injuries and severe disabilities; (d) hypersensitivity pneumonitis and other acute respiratory insults; and (e) musculoskeletal disorders; and noise-induced hearing loss.

The choice of sentinel events should be affected by any prior experience with surveillance in agricultural communities, and the flexibility to respond to the recognition of new problems should be maintained.

Incident reports should be sought from emergency rooms, hospital admission and discharge summaries, physicians' offices, directly from agricultural workers (who may not seek professional health services for occupational health concerns), health department reporting records and disease registries, community hospitals, and migrant health clinics, and other community sources as appropriate. Current exposure information on machinery and equipment used by agricultural workers, including typical operating times and circumstances, may also be included.

3. Identify a suitable location for the physical assignment of a nurse, most likely in a local or county health department or community health center, an agricultural extension service office, hospital or some other community or

municipal government office which serves the needs of that agricultural community and where access to agricultural, migrant and seasonal workers, their families, and extension agents would be facilitated.

4. Provide report of incident cases and outbreaks of significant illnesses and injuries ascertained by project nurses. (Significant events could include fatalities, multiple occurrences or single occurrences affecting multiple individuals, occurrences of new or emerging problems, conditions such as organic dust toxic syndrome which are of particular importance to agriculture, and others in accordance to NIOSH guidance.)

5. Collaborate with county extension agents, agricultural workers, agricultural worksite owners, NIOSH staff, health department, and hospital emergency room, outpatient and inpatient personnel in developing a process of case follow-up with agricultural workers and families to ascertain preventable causes of illnesses and injuries leading to the development and dissemination of disease and injury prevention strategies.

6. Collaborate with the local medical community, schools, cooperative extension service, agriculture workers, agricultural worksite owners, adult and youth farmer associations, NIOSH staff, and health department personnel to provide health education and promotion that incorporates agricultural vocation classes, health classes, and other appropriate areas.

7. Evaluate the activities of the agricultural community-based nurse in terms of the altered degree of case ascertainment and the effectiveness of worksite follow-up and recommendations.

8. Develop and adhere to a timetable for planning and implementing this project.

9. Collaborate with NIOSH in: (a) Training and providing orientation for nurse assignees in occupational safety and health and taking occupational histories; (b) introducing nurse assignees to concepts in surveillance and reporting; (c) securing expertise and assistance to site nurses and local health officials to perform appropriate health screening and testing; (d) securing technical support ranging from site investigations to supplying handout literature; and (e) final evaluation of the proposed activity.

10. Transmit data in an electronic format to NIOSH.

11. Collaborate with other NIOSH-funded occupational and agricultural health and safety activities in the state or region. (These could include the Farm Family Health and Hazard Surveillance (FFHHS) project; Agricultural Health Promotion Systems (AHPS); regional Centers for Agricultural Disease and Injury Research, Education and Prevention, Cancer Control in Agriculture, the Sentinel Event Notification System for Occupational Risks (SENSOR) and the Fatality Assessment, Control and Epidemiology (FACE) program.)

The following directions are offered as guidance as to the responsibilities of the nurse assignee:

1. Identify agriculture-related fatalities, illnesses and injuries;

2. Provide liaison (i.e., gaining entry to the agricultural worksite, obtaining cooperation from local residents) to local, state or territorial health departments and/or NIOSH personnel doing site evaluations;

3. Collaborate with the local medical community, schools, county extension agents, agriculture workers, agricultural worksite owners, adult and youth farmer associations, NIOSH staff, and other health department personnel to provide outreach for health education and health promotion and prevention within agricultural regions of the state. This may be accomplished through:

a. Receiving and forwarding case reports,

b. Making worksite visits,

c. Providing instructional programs,

d. Assisting county and state or territorial health departments in data collection and community evaluation of agricultural fatalities and job-related health and safety data and risk factors,

e. Using an on-site personal computer and modem link with the state or territorial health department for reporting cases and requesting technical assistance (This will permit timely responses from health personnel and timely requests for site investigations when appropriate.),

f. Assisting in case determination and making referrals to industrial hygiene and medical specialists elsewhere including NIOSH,

g. Providing sensitive, confidential attention to reported cases, including case confirmation and determination of appropriate follow-up,

h. Assisting in the assessment and evaluation of the effectiveness of intervention methods proposed by site investigators,

i. Coordinating and assisting, when necessary, in conducting appropriate and effective evaluation of worksite factors potentially responsible for the case,

j. Preparing and distributing case summaries and recommendations to the medical, public health, academic and farming communities, and

k. Collaborating with occupational safety and health expertise available in the community, region, and state or territory from academic and medical institutions, NIOSH occupational safety and health Educational Resource Centers (ERCs), occupational health groups, local and county health departments, county extension offices, and adult and youth farm associations (e.g., the Grange, 4–H Clubs, Future Farmers of America).

B. CDC/NIOSH Activities

1. Provide technical assistance in all phases of the development, implementation and maintenance of these cooperative agreements, including, but not limited to, providing guidance on occupational conditions appropriate for reporting, recommending reporting guidelines, developing case reporting forms, developing and providing booklets and educational materials to be used by the nurse assignees in carrying out intervention and prevention functions, and providing NIOSH publications and other documents to nurse assignees or field location, when appropriate and needed;

2. Provide expertise and assistance to site nurses and local health officials to assist in problem identification and resolution, and provide technical support which may range from site investigation to supplying literature, depending on applicant's resources;

3. Assist in conducting field investigations and intervention efforts and responding to incident reports requiring field follow-up;

4. Provide technical assistance in evaluation of the results of the reporting, intervention and outreach activities;

5. Promote and facilitate collaboration, as appropriate, with safety and health researchers funded under other NIOSH-sponsored surveillance and agricultural initiatives; and

6. Assist in disseminating a description of the impact of community-based outreach nurses in agricultural communities.

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Proposed plan for sentinel event surveillance, including the selection of appropriate agriculture related target conditions amenable to further investigative and preventive efforts and a demonstrated ability to obtain case

reports with adequate identifiers to enable follow-up efforts. (20%)

2. Documented experience conducting timely follow-up evaluations of affected agricultural sites. (The conduct of these evaluations should include timely and appropriate epidemiologic, industrial hygiene and engineering support from state, Federal or other clearly identified sources.) (20%)

3. Demonstrated capability of the proposed staff, including project nurses, to perform surveillance, follow-up and prevention activities in agricultural communities. (Substantial in-kind time and resources should be committed to the program.) (15%)

4. Scope of plans and demonstrated ability to provide outreach to communities through, for example, schools, county extension offices, and other municipal and civic organizations. (15%)

5. Demonstrated capacity for creative collaboration and coordination with local community, state, and Federal expertise for the purposes of implementing the proposed outreach, reporting, intervention, consultation and training efforts. (10%)

6. Suitability of the geographic locations selected for the nurses' activities. (5%)

7. Proposed schedule for initiating and accomplishing the activities of the cooperative agreement. (5%)

8. Capability to provide confidential handling of individual incident reports as medical information. (5%)

9. A feasible plan to evaluate techniques for the outreach, reporting and follow-up strategies, and the overall impact of the project. (5%)

10. Extent to which the program budget is reasonable, clearly justified and consistent with the intended use of cooperative agreement funds. (The budget should indicate: (a) Anticipated costs for personnel, travel, communications and postage, equipment contracts, and miscellaneous supplies for the budget period; and (b) the applicant's and other sources of funds that will be contributed to meet those needs.) (Not Scored)

Funding Priorities

Higher consideration for funding will be afforded those applications received from states with current funding under the "Occupational Health and Safety Surveillance Through Health Departments and Nurses In Agricultural Communities" program. Public comment regarding funding priorities is not being solicited due to time constraints.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 30 days after the application deadline date. (A waiver for the 60-day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this program is 93.262.

Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants in June 1993.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 350. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E13, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6546. Programmatic technical assistance may be obtained from Eugene Freund, M.D., M.S.P.H., NIOSH, Division of Surveillance, Hazard Evaluations and Field Studies, 4676 Columbia Parkway, Mailstop R–21, Cincinnati, Ohio 45226, (513) 841–4353.

Please refer to Announcement Number 350 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202–783–3238).

Dated: August 3, 1993.

Phillip W. Strine,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–18917 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–19–P

[Program Announcement No. 348]

National Institute for Occupational Safety and Health; Reducing Work-Related Musculoskeletal Disorders and Cardiovascular Diseases Among Workers in Transportation Equipment Manufacturing and Related Industries; Notice of Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement to conduct studies to examine the prevalence and etiology of work-related musculoskeletal disorders and cardiovascular diseases among workers employed in transportation equipment manufacturing and related industries, and to develop related intervention and prevention programs. Feasibility assessments for research on occupational risk factors for

cardiovascular disorders related to occupational exposures will also be considered.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering Healthy People 2000 see the section Where to Obtain Additional Information.)

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669 (a)).

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for this cooperative agreement.

Availability of Funds

Approximately $100,000 will be available in FY 1993 to fund one award. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget period within a project period of 1 to 3 years.

Purpose

One objective of the cooperative agreement is to reduce work-related musculoskeletal disorders (WMD's) of the upper and lower extremities and the back (e.g., tendinitis, arthritis and nerve compression syndromes such as carpal tunnel syndrome) among workers engaged in manufacturing transportation equipment and related industries. A second objective is to evaluate the association between work and cardiovascular disease by:

(1) Developing and conducting a study to evaluate ergonomic hazards in the work environment of workers manufacturing transportation equipment and related industries to assess the prevalence of WMD's in the same workers and in a suitable comparison group, and to develop prevention or intervention projects to reduce WMD's. The prevention or intervention projects will incorporate the concepts of worksite analysis, health and hazard surveillance, hazard control and training, and illustrate the role of employee involvement in each of these steps. This project shall include an evaluation of the success of the prevention and intervention activities; and

(2) Determining the feasibility of conducting a study to evaluate the association between occupational factors and heart disease among workers manufacturing transportation equipment and in related industries.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below and CDC/NIOSH shall be responsible for B., below:

A. Recipient Activities

I. Develop a Study of Work-Related Musculoskeletal Disorders

The objectives of the study of work-related musculoskeletal disorders are to:

(1) Determine the extent of ergonomic hazards in the work environment of selected workers engaged in manufacturing transportation equipment and related industries and a suitable comparison group; (2) assess the prevalence of WMD's in the same workers and comparison group; and (3) implement prevention or intervention projects to reduce WMD's and evaluate their success.

1. Develop a protocol to conduct an assessment of the ergonomic hazards in selected workers, a study of the prevalence of WMD's among the workers, and a comparison group and a strategy for reducing WMD's in the workers. Such a protocol would include:

a. Provide criteria for selection of a facility or group of workers at risk and a suitable comparison group for this study.

b. Provide methods to be used to identify and quantify the ergonomic hazards to which the workers and comparison group are exposed.

c. Provide methods for determining the prevalence of WMD's in the selected population of workers at risk and the comparison group. These might include the assessment of symptoms history, physical examinations, analysis of worker compensation records, etc. (The statistical analysis should be detailed, and the methods for incorporating information gathered on the extent of exposure to ergonomic hazards should be described.); and

d. Demonstrate that the project can be carried out in a cooperative labor-management environment.

2. Complete periodic progress reports. Complete a report suitable for publication in a peer reviewed journal that describes the findings of the ergonomic hazard identification and the epidemiologic components.

3. Develop a protocol to develop and implement a demonstration project to reduce and prevent WMD's in the selected group of workers. Such a protocol would include:

a. A description of the hazards targeted for intervention; (This description will be based upon information collected from the ergonomic hazard identification and epidemiologic components.)

b. A description of the prevention or demonstration program; (The program may include engineering controls, worker ergonomic training programs, and other controls or a combination of things that reduce worker exposure to risk factors associated with WMD's. The description should also include the time line for the program and the expected results.)

c. A description of an evaluation of the effectiveness of the prevention or demonstration program; and

d. A report suitable for publication which describes the results of the prevention/demonstration program.

4. Develop a plan for dissemination of the information on hazards prevalence of WMD's and the successful intervention strategies and control measures.

II. Assess the Feasibility of Conducting a Study of Occupational Risk Factors Related to Cardiovascular Disease and Develop a Protocol

The purpose of this activity is to determine the feasibility of studying risk factors associated with cardiovascular disease among workers in transportation equipment manufacturing and related industries.

1. Develop a plan for determining the feasibility of conducting the proposed study. The plan should include:

a. An enumeration of the types of cardiovascular disease of interest;

b. An enumeration of the types of occupational exposures or factors that may be risk factors for work-related cardiovascular disease in this population;

c. An evaluation of the feasibility and statistical validity of identifying an exposed population of suitable size with the exposure of interest;

d. A description and evaluation of the types of record systems that might be useful in identifying individuals with the disorders and exposures of interest; and

e. A demonstration that the project can be carried out in a cooperative labor-management environment.

2. Prepare a report describing the feasibility of conducting the study. If considered to be feasible by both the recipient and CDC/NIOSH, develop a protocol to conduct the study. The protocol should include:

a. A description of the disorders of interest and the rationale for the study;

b. A description of the exposures of interest and the methods for determining extent and intensity of subject exposure, outcomes and potential confounding factors;

c. A description of the study design, study population, comparison population, sample size necessary to detect meaningful differences;

d. A description of the data collection methods—if an existing data set will be used, a description of the data elements;

e. A description of the statistical methods;

f. An evaluation of the strengths and limitations and feasibility of the proposed study;

g. A time line for completing the study; and

h. A budget and personnel requirements.

B. CDC/NIOSH Activities

1. Provide technical assistance and consultation during protocol development and study period.

2. Coordinate review of protocols and draft final reports for each study and prevention/demonstration project. (Reviewers will include NIOSH staff, other occupational health experts, unions and company representatives.)

3. Assist in the analysis and interpretation of data collected during the studies, feasibility assessments, and prevention/demonstration project.

4. Assist in the preparation of the final report and articles for publication.

Evaluation Criteria

Applications will be reviewed and evaluated based on the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: (a) The applicant's understanding of the objectives of the proposed cooperative agreement and, (b) the relevance of the proposal to the objectives. (15%)

2. Feasibility of meeting the proposed goals of the cooperative agreement including: (a) The proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement and, (b) the proposed method for evaluating the accomplishments. (20%)

3. Experience in delivering occupational health and ergonomics programs for the target population, particularly in a cooperative labor-management environment. (30%)

4. Experience in conducting epidemiologic studies of worker populations. (10%)

5. Technical soundness of the approach in terms of ergonomic hazard identification and control, epidemiologic study design and conduct and prevention/demonstration project. (15%)

6. The qualifications, expertise, experience and supporting bibliographies of proposed program staff, and time allotted for them to accomplish program activities, support staff available for the performance of this project, and the facilities, space and equipment available for performance of this project. (10%)

7. The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health Reporting Requirements.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before September 9, 1993.

1. Deadline

Applications shall be considered to have met the deadline if they are:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 348. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6546. Programmatic technical assistance may be obtained from Marie Haring Sweeney, Ph.D., Industrywide Studies Branch, Division of Surveillance, Hazard Evaluation and Field Studies, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 841–4207.

Please refer to Announcement Number 348 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (202) 783–3238.

Dated: August 3, 1993.

Phillip W. Strine,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–18918 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–19–P

Meetings

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Idaho National Engineering Laboratory Public Meetings.

Time: 7 p.m.–9 p.m.

Date: Tuesday, August 24, 1993

Place: Ramada Inn Lewiston, 621 21st Street, Lewiston, Idaho 83501.

Time: 7 p.m.–9 p.m.

Date: Wednesday, August 25, 1993

Place: Best Western Canyon Springs, 1357 N. Blue Lakes Boulevard, Twin Falls, Idaho 83301.

Time: 7 p.m.–9 p.m.

Date: Thursday, August 26, 1993

Place: Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402.

Status: Open to the public. Informal, come-and-go sessions, limited only by space available.

Purpose: The purpose of these meetings is to provide facility-specific information, to give the public an opportunity to review example documents from specific facilities, and further enhance informal one-on-one working relationships between project team members and citizens.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Leeann Denham, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, HCEH, CDC, 4770 Buford Highway, NE., (F35), Atlanta, Georgia 30341–3724, telephone 404/488–7040.

Dated: August 3, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–18921 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–18–M

Prevention Centers Grant Review Committee: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call committee meeting.

Name: Prevention Centers Grant Review Committee.

Time and Date: 4 p.m.–5 p.m., August 10, 1993.

Place: CDC, Rhodes Building, 3005 Chamblee-Tucker Road, NE., Chamblee, Georgia 30341.

Status: Closed 4 p.m.–5p.m., August 10, 1993.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of health promotion and disease prevention centers.

Matters To Be Discussed: The conference call meeting will entail the review of a cooperative agreement application.

For this reason the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S. Code, and the Determination of the Associate Director for Policy Coordination, CDC, pursuant to Public Law 92–463.

The public is being given less than fifteen days notice of this meeting because of problems encountered in scheduling members' availability. It is necessary to hold this meeting on an expedited basis in order to provide a timely response to meet fiscal year funding deadlines.

Contact Person For More Information: Diane H. Jones, Ph.D., Project Officer, Office of the Director, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–41, Atlanta, Georgia 30341–3724, telephone 404/488–5395.

Dated: August 4, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–19086 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93N–0282]

Drug Export; Pulmozyme® (Dornase Alfa)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genentech, Inc., has filed an application requesting approval for the export of the biological product Pulmozyme® (dornase alfa) to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM–660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–295–9070.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Genentech Inc., 460 Point San Bruno Boulevard, South San Francisco, CA 94080, has filed an application requesting approval for the export of the biological product, Pulmozyme® (dornase alfa) to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Pulmozyme® (dornase alfa) is an enzyme inhalation solution produced by recombinant DNA technology and is indicated for chronic use for the management of cystic fibrosis. The application was received and filed in the Center for Biologics Evaluation and Research on June 14, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 19, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 1, 1993.

P. Michael Dubinsky,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 93-18890 Filed 8-6-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93D-0120]

Formation of the Advertising and Promotional Labeling Staff (APLS), Office of Establishment Licensing and Product Surveillance, Center for Biologics Evaluation and Research; APLS Procedural Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the formation of the Advertising and Promotional Labeling Staff (APLS) within the Office of Establishment Licensing and Product Surveillance (OELPS), Center for Biologics Evaluation and Research (CBER). OELPS was given responsibility for the surveillance and compliance evaluation of advertising and promotional labeling as part of CBER's reorganization, as announced in the **Federal Register** of November 17, 1992 (57 FR 54241). APLS began performing their review surveillance and compliance evaluation functions on January 11, 1993. The review and monitoring of biological advertising and labeling (including promotional labeling) was previously accomplished by the former Division of Product Certification, Office of Biological Product Review, CBER. CBER is also announcing the availability of the APLS Procedural Guide that details the operational review and evaluation procedures followed by the new staff and provides guidance on CBER's current interpretation of the regulation in 21 CFR 601.12 (*Changes to be reported*) with respect to promotional labeling and current practices for the review of advertising materials.

DATES: Comments by October 8, 1993.

ADDRESSES: Correspondence concerning advertising and promotion of biologic products from manufacturers or distributors of biologic products should be directed to the Advertising and Promotional Labeling Staff (HFM-202), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Submit written requests for single copies of the APLS Procedural Guide to the Congressional and Consumer Affairs Branch (HFM-12), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the APLS Procedural Guide to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The APLS Procedural Guide and comments received are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Toni Stifano, Center for Biologics Evaluation and Research (HFM-202), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-2084.

SUPPLEMENTARY INFORMATION: CBER is announcing the formation of APLS within OELPS. APLS began performing their advertising surveillance and compliance evaluation functions on January 11, 1993. The review and monitoring of biological advertising was previously accomplished by the former Division of Product Certification, Office of Biological Product Review, CBER. APLS, through their surveillance and compliance evaluation functions, will monitor all advertising and promotional labeling for biologic products to help ensure they are not false or misleading, are consistent with the approved labeling, present a fair balance about the product and include proper prescribing information (disclosure).

Advertisements, examples of which are provided in § 202.1(l)(1) (21 CFR 202.1(l)(1)) of the regulations, are subject to section 502(n) of the Federal Food, Drug, and Cosmetic Act (the act). Labeling (including promotional labeling) is defined in section 201(m) of the act and § 202.1(l)(2) and subject to various other provisions in section 502 of the act, including section 502(a) and (f).

CBER is also making available the APLS Procedural Guide, which details the procedure that manufacturers and distributors should follow in submitting promotional labeling and advertising material for review by CBER and the procedures APLS will follow in the review and evaluation of this material. The APLS Procedural Guide also provides guidance on CBER's current interpretation of the regulation requiring the reporting of important proposed changes in the labeling of biological products for which a license is in effect or for which an application for license is pending (21 CFR 601.12). Previously, CBER had interpreted this regulation to require the submission, for review and approval prior to distribution, of promotional labeling materials for all biological products. CBER is now interpreting this regulation to require, as part of the product license application or significant amendment, preapproval for promotional labeling materials only for (1) any biological product for which a license is pending; (2) any licensed biological product that is under review for a new use; or (3) any newly approved biological product. (As used in the APLS Procedural Guide, "newly approved" refers to products approved within the previous 120 days.) The 120-day period permits the review of any such materials that may have been in preparation at the time of approval. CBER is basing its present interpretation on its conclusion that changes in material other than those mentioned above are less important with regard to the public health. CBER notes that its present interpretation is more consistent with practices currently followed in the Center for Drug Evaluation and Research, and is in accordance with its ongoing efforts to reduce the burden of reporting.

By eliminating the need for preapproval of promotional labeling for approved products after the 120-day period, CBER can concentrate its review on the adequacy of the labeling for new products and/or indications. However, after the 120-day period, manufacturers should continue to submit final copies of all promotional labeling materials at the time of distribution. The APLS will review and evaluate, on a selective surveillance basis, the adequacy of the promotional labeling materials for approved biological products and may contact the manufacturer regarding any deficiencies.

In addition, the APLS Procedural Guide also provides guidance on CBER's current practices for the review of advertising materials. Previously, in order to ensure consistency and uniformity across the entire launch campaign, CBER had requested that manufacturers submit, for review prior to initial publication and/or dissemination, advertising materials for all biological products. CBER will continue to request that manufacturers submit for review prior to publication and/or dissemination, only the introductory advertising campaign materials to be used in the first 120 days after approval. For materials published and/or disseminated after the 120-day

period, manufacturers should continue to submit final copies of all advertising materials at the time of publication and/or dissemination.

Manufacturers should send duplicate copies of all promotional labeling and advertising materials, with a Transmittal of Labels and Circulars (Form FDA-2567) signed by the Responsible Head, to APLS (address above) for inclusion in their CBER files. (The forms may be obtained by calling APLS at 301-594-2084.) The APLS will review and evaluate, on a selected surveillance basis, the adequacy of the promotional labeling and advertising materials for approved biological products and may contact the manufacturer regarding any deficiencies.

APLS will issue or coordinate all CBER correspondence regarding advertising or promotion, including notices of violations and warning letters. APLS will work in cooperation with CBER's Office of Compliance in requesting FDA district offices to investigate advertising and promotional activities to obtain additional information or documentation. Other compliance procedings may be conducted by CBER's Office of Compliance in cooperation with APLS.

FDA is making available the APLS Procedural Guide to help ensure that manufacturers and distributors have a clear understanding of the procedures to follow in submitting advertising and promotional material for review by CBER and the procedures APLS will follow in the review and evaluation of this material. FDA considers the procedures set out in the guide as interim. Interested persons may submit written comments on the procedural guide to the Dockets Management Branch (address above). FDA will consider such comments in determining whether revisions to the procedural guide are warranted.

Dated: August 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-18889 Filed 8-6-93; 8:45 am]

BILLING CODE 4160-01-F

Healt Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women," HHS/HCFA/ORD No. 09-70-0063. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires that only the "Routine Uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice. See "Dates" section for comment period.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on August 2, 1993.

Comments on the routine use portion of this notice must be received by 30 days after publication in the Federal Register (September 8, 1993). The new system of records will become effective September 20, 1993, unless HCFA receives comments which would necessitate alterations to the system.

ADDRESSES: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, HCFA, Room 2-H-4 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187. Comments received will be available for inspection at thislocation.

FOR FURTHER INFORMATION CONTACT: Edward Hutton, Division of Health Systems and Special Studies, Office of Demonstrations and Evaluations, Office of Research and Demonstrations, HCFA, Room 2306 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187. His telephone number is (410) 966-6616.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records. This system of records is essential to evaluating the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women. This departmental initiative is in recognition of the growing number of substance abusing women of child bearing age, the concern about adverse birth outcomes because of prenatal substance abuse, and the apparent shortage of appropriate substance abuse treatment facilities for this population.

In order to analyze the effect of the demonstration on birth outcomes and on cost and utilization of health care, the evaluation will use individually identifiable data. Consequently, HCFA will establish a system of records that includes individually identifiable data.

The Medicaid demonstration projects, which are expected to provide services for 3 years, beginning approximately July 1, 1993, will seek to improve outreach and assessment; expand, integrate, and coordinate program services; and improve client case management. The overall objective of the demonstration is to increase the number of Medicaid-eligible women who receive essential prenatal care services, substance abuse treatment, and other relevant services to promote better health outcomes for themselves and their offspring.

The demonstration which is being implemented in five States: Maryland, Massachusetts, New York, South Carolina, and Washington. The award for the independent evaluation is through September 29, 1997. The system of records will include data collected from the Medicaid Management Information System of each participating state; vital records; utilization data systems maintained by providers and case managers who serve the covered population and comparison group members; a survey of demonstration participants and control group members; and substance abuse data.

In order to fulfill the objectives and complete the tasks of this contract, the contractor must have individually identifiable records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, it will not have an unfavorable effect on the privacy or other personal or property rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for what is known as "routine use"—that is, disclosure without consent for purposes that are compatible with the purposes for which we collected the information. The establishment of routine uses does not mandate HCFA to release records with identifiers. In fact, HCFA is extremely cautious when releasing records. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administration and evaluation of the Medicaid program for which HCFA is responsible. The disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy or other personal or property rights of individuals.

Dated: July 29, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

09–70–0063

SYSTEM NAME:

Evaluation of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system will be maintained by the demonstration evaluation contractor selected by HCFA. Contact System Manager for the location of the contractor. The system or portions of the system, may also be maintained at the HCFA Data Center. The Data Center is located at the Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207–5187.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicaid eligibles in demonstration and in comparison sites. Areas participating in the demonstration were awarded through a competitive grant process. The demonstration is being implemented in five States: Maryland, Massachusetts, New York, South Carolina, and Washington.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain information concerning individuals' names, Medicaid numbers, Social Security numbers, demographic characteristics (e.g., age, sex), substance abuse history, and utilization and cost of health care services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1115 of the Social Security Act, 42 U.S.C. 1315.

PURPOSE(S):

To provide data necessary to analyze the impact of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Subject to the provisions of 42 U.S.C. 290dd–2 and 42 CFR 2.52(a), which prescribe standards for confidentiality and disclosure of records pertaining to certain substance abuse treatment-related activities or programs, disclosure may be made to the following:

1. The evaluation contractor who will use this information to analyze the impacts of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women.

2. A congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. A HCFA contractor, for the purpose of permitting its employees to collate, analyze, aggregate, or otherwise refine or process records in this system, or to enable its employees to develop, modify, and/or manipulate automated data processing (ADP) software. Data would also be disclosed to HCFA contractors or their subcontractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

4. An individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the risk of any adverse effect on the privacy of the individual that additional exposure of the record might bring, and

(3) Is such that there is reasonable probability that the objective for the use would be accomplished;

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure or the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with the written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law.

d. Secures a written statement attesting to the recipient's understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Information will be retrieved by the Medicaid eligible woman's name, Social Security number, and Medicaid number.

SAFEGUARDS:

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, safeguards established in accordance with Department standards and National Institute of Standards and Technology guidelines (e.g., security codes) will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program, and HCFA Automated Information Systems (AIS) Guide, Systems Security Policies. Similar safeguards will be provided to any record transferred to HCFA central office.

RETENTION AND DISPOSAL:

Paper copies of data collection forms and magnetic tapes (or equivalent media) with identifiers will be retained in secure storage areas. Records will be retained for 2 years after the termination of the evaluation contract. The disposal techniques of degaussing will be used to strip magnetic tape (or equivalent media) of identifying names and numbers. Paper copies of records will be destroyed at this time.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows

Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

NOTIFICATION PROCEDURE

Inquiries and requests for system records should be addressed to the system manager at the address indicated above. The requestor must specify the name and Social Security number or Medicaid number of the record for which an inquiry or request is made.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requestors should reasonably specify the record contents being sought. These procedures are in accordance with Department Regulations, 45 CFR 5b.5(a)(2).

CONTESTING RECORD PROCEDURE:

Contact the system manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting the record (e.g., why it is inaccurate, irrelevant, incomplete, or not current). These procedures are in accordance with Department regulations, 45 CFR 5b.7

Note: Notification, record access, and contesting record procedures apply only to the subject individual.

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system are expected to include the following: Vital records; utilization data systems maintained by case managers and providers who serve the covered population and comparison group members; a survey of demonstration participants and control group members; substance abuse data; and Medicaid claims and administrative data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–18896 Filed 8–6–93; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–TBA), Washington, DC 20503, telephone 202–395–7340.

Title: Wild Exotic Bird Import Permit Requirements Contained in the Wild Bird Conservation Act of 1992.

OMB Approval Number: N/A.

Abstract: On October 23, 1992, the President signed into law the Wild Bird Conservation Act of 1992, the purposes of which include promoting the conservation of exotic birds by: Ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment; and assisting wild bird conservation and management programs in countries of origin. The Act authorizes the Service to issue permits for the importation of individual birds from otherwise prohibited species. The information required on the application to issue such permits is necessary to allow the Service to determine if an applicant is qualified to import an exotic bird species for one of the four activities authorized by the statute. The four exemptions are: Scientific research, zoological breeding or display programs; cooperative breeding programs designed to promote the conservation of the species in the wild that are developed and administered by organizations meeting certain standards; and personally owned pets of individuals returning to the U.S. after being out of the country for at least a year.

Service Form Numbers: 3–200 (Federal Fish and Wildlife Permit Application).

Frequency: On occasion.

Description of Respondents: Individuals or households; educational institutions; businesses or other for profit; non-profit institutions; and small businesses or organizations.

Estimated Completion Time: 600 respondents at 4 hours = 2,400 hours; 200 respondents at 1 hour = 200 hours.

Annual Responses: 800 respondents.

Annual Burden Hours: 2,600.

Service Clearance Officer: Phyllis H. Cook, 703–358–1943. Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: July 28, 1993.

M. J. Spear,

Assistant Director—Ecological Services.

[FR Doc. 93–19006 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Technical/Agency Draft Recovery Plan for Chamaecrista glandulosa var. mirabilis for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Chamaecrista glandulosa* var.. *mirabilis*. This endemic, endangered plan occurs on white silica sands in northern Puerto Rico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before October 8, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the recovery plan may obtain a copy by contacting the Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303. Written comments and materials regarding the plan should be addressed to Field Supervisor, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials are available on request for public inspection, by appointment, during normal business hours at the above-mentioned address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Silander, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. to help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for the downlisting or delisting of them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et*

seq.) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comments be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Recovery Plan is for *Chamaecrista glandulosa* var. *mirabilis*, a small shrub endemic to the white silica sands of the northern coasts of Puerto Rico. Data from herbarium collections indicate that this species was once common throughout this area of the north coast. Urban, industrial and agricultural expansion have resulted in the restriction of the species to only one area in Dorado, one in Vega Alta, and scattered populations along the southern shore of the Tortuguero Lagoon. The extraction of silica sand and fire, as well as development, continue to threaten these remaining populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered for inclusion in the Recovery Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

James P. Oland

Field Supervisor.

[FR Doc. 93–19023 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Wildlife and Plants; Availability of Draft Preliminary Analysis of Potential Population Reestablishment Sites for the Florida Panther

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service, with input form various State and Federal agencies, has initiated the process to identify and evaluate candidate population reestablishment sites for the Florida panther, *Felis concolor coryi*. The study area includes areas of the Southeastern U.S. considered to represent the historic range of the Florida panther. A draft preliminary analysis of potential reestablishment sites has been completed and is available for review and input by the public, affected Federal, State, and local agencies and other interested parties.

DATES: Comments from all interested parties must be received by October 8, 1993, in order to be considered in the development of the final preliminary analysis of potential population reestablishment sites.

ADDRESSES: Send correspondence concerning this notice to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan, Florida Panther Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611–0307, telephone 904/392–1861.

SUPPLEMENTARY INFORMATION:

Background

The Florida panther represents one of this Nation's most critically endangered animals—presently consisting of a single population in south Florida estimated to number 30 to 50 adults. The Florida panther's existence is severely threatened by both rapid and gradual extinction processes. Factors of concern include habitat loss, environmental contaminants, highways, prey resources, human activities, disease, and genetic erosion. Recent population viability analysis projections indicate that under existing demographic and genetic conditions the Florida panther will likely be extinct in 25–40 years. Actual time to extinction could be accelerated significantly by the occurrence of a catastrophic population reducing event.

Extinction of the Florida panther can be avoided only if programs to enhance existing genetic conditions and expand the existing population are successful. Programs to enhance genetic conditions must include actions to preserve existing genetic diversity, manage for inbreeding problems and restore historic gene flow. Programs to expand the population must include actions to preserve habitats that are considered essential to meeting the needs of a self-sustaining population in south Florida and actions to reestablish populations elsewhere within the panther's historic range.

Because of demographic and viability factors, the existing wild population provides virtually no security against complete loss of the taxon. The lack of suitable, unoccupied habitat for recruitment and inherent density limiting factors associated with this species virtually eliminates prospects of achieving significant population growth within the existing wild population. Thus, successful population reestablishment is essential for recovery of the panther. The recovery objective of the approved recovery plan is to achieve three viable, self-sustaining populations within the panther's historic range. With only one extant population remaining, a minimum of two additional populations will have to be reestablished. The purpose of this analysis is to complete the first step in identifying and evaluating potential population reestablishment sites on a range-wide basis.

Author

The primary author of this notice is Dennis B. Jordan, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611–0307, telephone 904/392–1861.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: July 26, 1993.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 93–18613 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[UT–920–93–4120–01]

Utah: Public Hearing and Call for Public Comment on Fair Market Value and Maximum Economic Recovery; Coal Lease Application UTU–68082

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: The Bureau of Land Management announces a public hearing on a proposed coal lease sale and requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale.

The Federal coal lands in the vicinity of coal lease application UTU–68082 have been delineated into a coal lease tract referred to as the Crandall Canyon Tract. The tract under consideration is located in the Manti-LaSal National Forest of Emery County, Utah, approximately 15 miles northwest of

Huntington, Utah, and is described as follows:

T. 15 S., R. 6 E.. SLM,
Sec. 25, S½;
Sec. 26, S½;
Sec. 27, E½SE¼;
Sec. 34, lot 1, E½NE¼, NE¼SE¼;
Sec. 35, lots 1–4, N½, N½S½.
T. 15 S., R. 7 E., SLM,
Sec. 30, lots 7–12, SE¼
Sec. 31, lots 1–12 NE¼, N½SE¼, SW¼SE¼.
T. 16 S., R. 6 E., SLM,
Sec. 1, lots 1–12, SW¼
Sec. 3, lot 1, SE¼NE¼, E½SE¼.
T. 16 S., R. 7 E., SLM,
Sec. 6, lots 2–4, SW¼NE¼.
Containing 3,384.02 acres more or less.

One economically minable coal bed (the Hiawatha) is found in this tract. The Hiawatha seam average 8 feet in thickness in this area. This tract contains an estimated 18 million tons of recoverable, high-volatile C bituminous coal. Coal quality in the seam, on an as received basis, is as follows: 12,790 BTU/lb. 4.08 percent moisture, 0.63 percent sulfur, and 8.75 percent ash, 45.31 percent fixed carbon, and 42.45 percent volatile matter.

The public is invited to the hearing to make public comment and also to submit written comments on the fair market value and the maximum economic recovery of the tract.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR parts 4322 and 4325, a public hearing shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining the proposed lease. Not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the mentioned address during regular business hours (8 a.m. to 4 p.m.) Monday through Friday.

Comments on fair market value and maximum economic recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource.
2. The mining method or methods which would achieve maximum economic recovery of the coal including specification of seams to be mined and the most desirable timing and rate of production.
3. The quantity of coal.
4. If this tract is likely to be mined as part of an existing mine and therefore be evaluated, on a realistic incremental basis, in relation to the existing mine to which it has the greatest value.
5. If this tract should be evaluated as part of a potential larger mining unit and evaluated as a port ion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit).
6. The configuration of any larger mining unit of which the tract may be a part.
7. Restrictions to mining which may affect coal recovery.
8. The price that the mined coal would bring when sold.
9. Costs include mining and reclamation of producing the coal and tons of production.
10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given.
11. Depreciation and other tax accounting factors.
12. The value of any surface estate where held privately.
13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area.
14. Any comparable sales data of similar coal lands.

Coal values developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

DATES: The public hearing will be held August 31, 1993, and comments on fair market value and maximum economic recovery must be received by September 30, 1993.

ADDRESSES: For more complete data on this tract, please contact Max Nielson, 801–539–4038, Bureau of Land Management, Utah State Office, PO Box 45155, 324 South State Street, Salt Lake City, Utah 84145–0155.

The public hearing will be held at the Emery County Courthouse, 2nd Floor, Conference Room, 95 East Main Street, Castledale, Utah, at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Max Nielson, 801–539–4038.

James M. Parker,
Utah State Director.

[FR Doc. 93–18906 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–DQ–M

[CO–920–93–4110–03; COC54297]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC54297, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from January 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective January 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: July 27, 1993.

Janet Budzilek,
Chief, Fluid Minerals Adjudication Section.

[FR Doc. 93–19024 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–JB–M

[CO–920–93–4110–03; COC54291]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC54291, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from January 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and

16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective January 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: July 27, 1993.

Janet Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 93–19025 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–JB–M

[AZ–050–03–4210–05; AZA 27798 and AZA 27895]

Realty Action, Recreation and Public Purposes Act Classification; La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in La Paz County, Arizona have been examined and found suitable for classification for lease or conveyance to the La Paz County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The La Paz County Board of Supervisors propose to use the following lands for a shooting range.

Gila and Salt River Meridian, Arizona

T. 7 N., R. 16 W.,
Sec. 31, Lots 2, 3, SE¼NW¼, NE¼SW¼ (within);
T. 7 N., R. 17 W.,
Sec. 36, SE¼NE¼, NE¼SE¼ (within);
Containing 81.50 acres, more or less.

The La Paz County Board of Supervisors propose to use the following lands for a community park.

Gila and Salt River Meridian, Arizona

T. 7 N., R. 16 W.,
Sec. 22, SE¼SW¼ (within);
Sec. 27, NE¼NW¼ (within);
Containing 80.00 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with the current Bureau of Land Management land use planning and would be in the public interest. The lease/patent, when issued will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. An easement for streets, roads, and utilities in accordance with the transportation plan for La Paz County.

Detailed information concerning this action is available for review at the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406.

DATES: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period until September 23, 1993, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406.

SUPPLEMENTARY INFORMATION: Interested parties may submit comments involving the suitability of the lands for the shooting range or community park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Interested parties may submit comments regarding the specific use proposed in the application and plan of developments, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a shooting range or community park.

EFFECTIVE DATE: Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Karen Vercauteren, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, telephone (602) 855–8017.

Dated: July 26, 1993.

Michael A. Taylor,

Acting District Manager.

[FR Doc. 93–19021 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–32–M

[AZ–050–03–4210–05; CAAZCA 19694]

Noncompetitive Sale of Public Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management has determined that the following described land is suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at not less than fair market value.

San Bernardino Meridian, California

T. 9 N., R. 22 E.,
Sec. 13, Lot 11.
Containing 0.07 acre.

DATES: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws. For a period until September 23, 1993 interested persons may submit comments regarding the proposed sale of the land to the Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406. The land will not be offered for sale until October 8, 1993. On August 9, 1993, the public land described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of the patent or May 6, 1994, whichever is first.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface and subsurface estates of the above-described land to Donald A. and/or Peggy Q. Lewis to resolve a longstanding inadvertent trespass.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required

to pay a $50 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservation for the United States:

1. Reservation to the United States of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

EFFECTIVE DATE: Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior effective October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Debbie Rowland, Realty Specialist, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, telephone (602) 855-8017.

Dated: July 26, 1993.

Michael A. Taylor,

Acting District Manager.

[FR Doc. 93-19022 Filed 8-6-93; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (101-0046); Washington, DC 20503, telephone (202) 395-7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: Well Summary Report, Form MMS-125

OMB approval number: 1010-0046

Abstract: Respondents submit Form MMS-125 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

Bureau form number: Form MMS-125

Frequency: On occasion

Description of respondents: OCS oil, gas, and sulphur lessees

Estimated completion time: 1 hour

Annual responses: 2,579

Annual burden hours: 2,579

Bureau Clearance Officer: Arthur Quintana, (703) 787-1239.

Dated: June 14, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93-19009 Filed 8-6-93; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-0045); Washington, DC 20503, telephone (202) 395-7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: Sundry Notices and Reports on Wells, Form MMS-124.

OMB approval number: 1010-0045.

Abstract: Respondents submit Form MMS-124 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations, protection of the human, marine, and coastal environments, conservation of the natural resources in the OCS, prevention of waste, and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

Bureau form number: Form MMS-124.

Frequency: On occasion.

Description of respondents: Outer Continental Shelf oil, gas, and sulphur lessees.

Estimated completion time: 1 hour.

Annual responses: 8,820.

Annual burden hours: 8,820.

Bureau Clearance Officer: Arthur Quintana, (703) 787-1239.

Dated: June 14, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93-19010 Filed 8-6-93; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-0044); Washington, DC 20503, telephone (202) 395-7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: Application for Permit to Drill, Form MMS-123

OMB approval number: 1010-0044

Abstract: Respondents submit Form MMS-123 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials,

and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

Bureau form number: Form MMS–123
Frequency: On occasion
Description of respondents: OCS oil, gas, and sulphur lessees
Estimated completion time: 1.5 hours
Annual responses: 1,307
Annual burden hours: 1,555
Bureau Clearance Officer: Arthur Quintana, (703) 787–1239

Dated: June 14, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–19014 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0017); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Semiannual Well Test Report, Form MMS–128
OMB approval number: 1010–0017
Abstract: Respondents submit Form MMS–128 to the Minerals Management Service's (MMS) Regional Supervisors so they can evaluate the results of well tests to ascertain if reservoirs are being depleted in a manner that will lead to the greatest ultimate recovery of hydrocarbons. The form is designed to present current well data on a semiannual basis to permit the updating of permissible producing rates and provide the basis for estimates of currently remaining recoverable gas reserves.
Bureau form number: Form MMS–128
Frequency: Semiannual
Description of respondents: Outer Continental Shelf oil and gas lessees
Estimated completion time: 2 hours
Annual responses: 1,540
Annual burden hours: 3,080
Bureau Clearance Officer: Arthur Quintana, (703) 787–1239

Dated: June 14, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–19015 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927–5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 4136, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Extension without change of a currently approved form.
Bureau/Office: Office of Economics
Title of Form: Class I Quarterly and Annual Report of Motor Carriers of Passengers.
OMB Form Number: 3120–0021
Agency Form Number: MP–1
Frequency: Quarterly and Annually
No. of Respondents: 30
Total Burden Hours: 450

Type of Clearance: Extension without change of a currently approved form.
Bureau/Office: Office of Economics
Title of Form: Uniform System of Accounts—Railroads.
OMB Form Number: 3120–0107
Agency Form Number: None
Frequency: Recordkeeping Requirement
No. of Respondents: 13
Total Burden Hours: 17,160

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–18999 Filed 8–6–93; 8:45 am]

BILLING CODE 7035–01–M

[No. 40887]

Range Tariffs of All Motor Common Carriers—Show Cause Proceeding

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Notice of decision.

SUMMARY: The ICC has concluded that tariffs that disclose neither the actual rate for a shipment nor an objective methodology by which the rate can be determined (so-called "range" tariffs) do not fully comply with the statutory rate disclosure requirements. In a notice of proposed rulemaking published in the rules section of today's issue of the **Federal Register**, the ICC is proposing a regulation to permit carriers to supplement range tariffs by fax filing of the actual rate applicable to individual shipments prior to transport of those shipments. This decision will have prospective effect only. Moreover, until range tariffs are ordered canceled or modified, they remain applicable to all relevant shipments. Once the ICC has completed the rulemaking proceeding, carriers will no longer be able to rely on range tariffs, standing alone, to establish transportation rates.

FOR FURTHER INFORMATION CONTACT: Charles Langyher (202) 927–5160, [TDD for hearing impaired (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 2, 1993.

By the Commission: Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Walden commented with a separate expression. Commissioner Phillips dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19004 Filed 8–6–93; 8:45 am]

BILLING CODE 7035–01–P

[Ex Parte No. 516]

Railroad Revenue Adequacy—1992 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On August 6, 1993, the Commission served a decision announcing the 1992 revenue adequacy determinations for the Nation's Class I railroads. Two carriers (Illinois Central and Norfolk Southern) are found to be revenue adequate. The remaining carriers are found to be revenue inadequate.

EFFECTIVE DATE: This decision shall be effective on August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 927–6187 (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: This annual determination of railroad revenue adequacy is made in accordance with the standards developed in *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), as modified in *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986), and *Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes*, 5 I.C.C.2d 65 (1988). It also incorporates modifications made in *Railroad Revenue Adequacy—1988 Determination*, 6 I.C.C.2d 933 (1990). This decision applies the rate of return standard to data for the year 1992.

A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment at least equal to the current cost of capital for the railroad industry for 1992, determined to be 11.4 percent in *Railroad Cost of Capital—1992*, 9 I.C.C.2d 566 (1993). Under this standard, we find that two railroads were revenue adequate in 1992, the Illinois Central Railroad Company and Norfolk Southern Corporation. Additional information is contained in the Commission decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Environmental and Energy Considerations

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding by the Commission. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: July 22, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–18998 Filed 8–6–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Uniform Crime Reporting Data Providers' Advisory Policy Board; Meeting

The Uniform Crime Reporting (UCR) Data Providers' Advisory Policy Board will meet on September 17–18, 1993, from 9 a.m. until 5 p.m., at the Sand Dunes Resort Hotel, 74th Avenue North, Myrtle Beach, South Carolina, telephone 803–449–7441, to formulate recommendations to the Director, Federal Bureau of Investigation (FBI) on the policy, and operation of the UCR system, and related topics.

The topics to be discussed will include the progress of the National Incident Based Reporting System (NIBRS), the status of the reorganization of the FBI criminal justice information system, reorganization of the CJIS advisory groups process, and other operational matters.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning UCR or related matters with the Board before or after the meeting. Anyone wishing to address this session of the meeting should notify the Committee Management Liaison Officer, Mr. David F. Nemecek, Federal Bureau Investigation (FBI), at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name, and corporate designation, consumer affiliation, or Government designation, along with a short statement describing the topic to be addressed. A nonmember requestor will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Inspector-Deputy Assistant Director, CJIS Division, FBI, 10th and Pennsylvania Avenue, Washington, DC 20535, telephone (202) 324–8920.

Dated: August 1, 1993.

David F. Nemecek,

Inspector-Deputy Assistant Director, Designated Federal Employee.

[FR Doc. 93–19035 Filed 8–6–93; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–064]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: September 1, 1993, 9 a.m. to 5 p.m.; and September 2, 1993, 8:30 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, Program Review Center, Ninth Floor, room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia K. Kraemer, Code IC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0791.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows.

—Recent Senior Appointments
—Budget and Congressional Update
—Space Station Transition
—Program highlights
—Committee Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 3, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93–18964 Filed 8–6–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–81 issued to Georgia Power Company, et al. (the licensee) for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia.

The proposed amendments would revise Technical Specification (TS) 3/4.3.1, "Reactor Trip System Instrumentation," TS 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," and their associated Bases to relax surveillance test intervals (STI) and allowed outage times (AOT) for engineered safety features actuation system (ESFAS) instrumentation based on Westinghouse topical report WCAP–10271 as previously approved by the NRC. The changes to TS 3/4.3.1 for the reactor trip system (RTS) are those directly associated with implementing the ESFAS relaxations as recommended by the NRC staff in previous SERs regarding WCAP–10271.

The licensee is making plant hardware and procedural modifications to perform routine testing in bypass of the ESFAS and RTS instrumentation without the use of temporary jumpers or the lifting of leads. Therefore, the licensee also proposes certain changes to the Vogtle TS to incorporate the provisions of "test in bypass."

The changes to TS 3/4.3.1 would include:

(1) Removal of the requirement to perform the RTS analog channel operational test on a staggered basis from TS Table 4.3–1 (Note 17).

(2) Addition of a new Action to allow 6 hours to restore an inoperable channel to Operable status before requiring shutdown to Hot Standby within the next 6 hours and to allow surveillance testing, provided the other channel is Operable (Action 7).

(3) Removal of table notations g and 18 and appropriate references from TS Tables 3.3–1 and 4.3–1, indicating that the ESFAS Actions are more restrictive and, therefore, applicable.

(4) Changes to Action statements to allow for "test in bypass" (Actions 2 and 6).

(5) Retention of the current Action 6 as Action 9 for the reactor coolant pump undervoltage and underfrequency trip functions.

(6) Addition of table notation f to identify those instrument functional units which have "test in bypass" capability.

The changes to TS 3/4.3.2 would include:

(1) Increase in STIs for ESFAS analog channel operational tests from once per month to once per quarter (Functional Units 1.c, 1.d, 1.e, 2.c, 4.c, 4.d, 4.e, 5.c, 6.b, 6.d, and 9.a).

(2) Increase in the time that an inoperable ESFAS channel may be maintained in an untripped condition from 1 hour to 6 hours (Action 20 and new Action 29).

(3) Removal of current Action 15 which is no longer used. Functional Units which used current Action 15 would be applied to other Actions. A new Action 15 would be created (see item 4 below) since that number is no longer used.

(4) Increase in the time that an inoperable ESFAS channel may be bypassed to allow testing of another channel in the same function from 2 hours to 4 hours (Actions 14, 17, 20, 22, and 25). New Actions 15 and 29 would be created since the semi-automatic switchover to containment emergency sump function's AOT and the loss of power to the 4.16 kv ESF bus, for a channel to be bypassed during surveillance testing, would remain at 2 hours.

(5) Revision to Actions 14, 22, and 25 to allow 6 hours to restore an inoperable Channel to Operable status before requiring shutdown to Hot Standby within the next 6 hours.

(6) Changes to Action statement 20 to allow for "test in bypass."

(7) Addition of new Action 29 to allow Startup and/or Power Operation to proceed when the number of Operable channels is one less than the Total Number of Channels provided certain conditions are met.

(8) Removal of table notation d and appropriate references to establish consistency with previous amendments on Vogtle regarding Generic Letter 87–09.

(9) Addition of table notation "##" to identify those instrument functional units which have "test in bypass" capability.

(10) Administratively increasing each Action Statement number 29 and higher in TS Tables 3.3–4 and 3.3–8 so that each Action Statement number would continue to be unique.

Proposed revisions to the Bases for TS 3/4.3.1 and 3/4.3.2 would also be made.

The licensee's submittal included Westinghouse report WCAP–13376 (Proprietary) and WCAP–13377 (Non-proprietary), Revision 2, "Bypass Test Instrumentation for the Vogtle Electric Generating Plant Units 1 and 2," to describe the design modifications associated with the capability at Vogtle to "test in bypass." The licensee notes, however, that it has elected not to implement, and has proposed no TS changes with respect to, the "test in bypass" capabilities for the reactor coolant pump undervoltage and underfrequency reactor trip functions that is described in this Westinghouse report.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1994, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.19(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Significant Hazards Evaluation Regarding WCAP–10271

(1) The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. The determination that the result of the proposed changes are within all acceptable criteria has been established in the SERs prepared for WCAP–10271, WCAP–10271 Supplement 1, WCAP–10271 Supplement 2 WCAP–10271 Supplement 2, Revision 1. Implementation of the proposed changes results in a slight increase in the postulated instrumentation yearly unavailability. This slight increase, which is primarily due to less frequent surveillance, results in a slight increase in core damage frequency (CDF) and public health risk. The values determined by WOG [Westinghouse

Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BLN) as part of an audit and sensitivity analyses for the NRC Staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable. The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes may effect the probability of failure of the RTS, but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not result in a change in the manner in which the RTS/ESFAS provides plant protection or the manner in which surveillances are performed to demonstrate operability. Therefore, a new or different kind of accident will not occur as a result of these changes.

(3) The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Evaluations have been performed to assure that the plant setpoints properly account for these instrument uncertainties over the longer time interval.

Implementation of the proposed changes is expected to result in an overall improvement in safety as follows:

a. Less frequent testing will result in fewer inadvertent actuations of ESFAS components.

b. Longer AOTs provide for better assessment of problems and easier repairs ultimately resulting in better equipment performance.

c. Less frequent distraction of the operator and shift supervisor to attend to and support instrumentation testing will improve the effectiveness of the operating staff in monitoring and controlling plant operation.

Significant Hazards Evaluation Regarding "Test in Bypass"

(1) The bypass testing capability does not involve a significant increase in the probability of consequences of an accident previously evaluated. Surveillance testing in the bypass condition will not cause any design or analysis acceptance criteria to be exceeded. The structural and functional integrity of the reactor protection and engineered safety features actuation systems, or any other plant system, is unaffected. Operability of the reactor trip and engineered safety features actuation systems is defined by the TS. These systems are part of the accident mitigation response and do not themselves act as an initiator for any transient. Therefore, the probability of occurrence is not affected.

Implementation of the bypass testing capability does not affect the integrity of the fission product barriers utilized for mitigation of radiological dose consequences as a result of an accident. Plant response as modeled in the safety analyses is unaffected. Hence, the offsite mass releases used as input to the dose calculations are unchanged from those previously assumed. Therefore, the offsite dose predictions remain within the acceptance criteria for each of the transients affected. Since it has been determined that the transient results are unaffected by surveillance testing in bypass, it is concluded that the consequences of an accident previously evaluated are not increased.

(2) Implementation of the bypass test capability does not create the possibility of a new or different kind of accident from any accident previously evaluated. Surveillance testing in bypass does not affect accident initiation sequences or response scenarios as modeled in the safety analyses. No new operating configuration is being imposed by the surveillance testing in bypass that would create a new failure scenario. In addition, no new failure modes are being created for any plant equipment. Integrity of the bypass test instrumentation has been demonstrated by design conformance to applicable industry standards, evaluation, and testing for fault condition control, failure detection, reliability, and equipment qualification. Therefore, the types of accidents defined in the Final Safety Analysis Report (FSAR) continue to represent the credible spectrum of events to be analyzed which determine safe plant operation.

(3) The margin of safety associated with reactor trip and engineered safety features functions is evident by the results of the accident analyses. Results of the safety analyses confirm that the acceptance criteria are met. The required margin of safety regulated for each affected safety analysis is maintained. These conclusions are not affected by performing surveillance testing in bypass. Thereby, the adequacy of the revised TS for bypass testing implementation to maintain the plant in a safe operating range is also confirmed, and this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelmam Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-evidence witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If a final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Esquire, Troutman, Sanders, Nations Bank Plaza, suite 5200, 600 Peachtree Street NE., Atlanta, Georgia 30308–2210, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 1, 1993, as supplemented July 26, 1993, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 3rd day of August 1993.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Project Manager, Project Directorate ii-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–18930 Filed 8–6–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–289]

GPU Nuclear Corporation; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50 issued to GPU Nuclear Corporation (the licensee) for operation of the Three Mile Island Nuclear Station, Unit 1 located in Dauphin County, Pennsylvania.

The proposed amendment would revise the plant Technical Specifications (TS) to reflect the inclusion of gadolinia-urania in the fuel rod design description, to revise the borated water storage tank boron concentration limits, and to clarify the bases section of the TS. The proposed amendment would also place a reference in the TS to Babcock & Wilcox Topical Report BAW–10179P, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses." This report consolidates the methodologies used to establish the operating limits contained in the Core Operating Limits Report and was approved by the Commission in March 1993.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The use of gadolina-urania fuel rods has been adequately demonstrated and bench-marked by B&W. Reactivity and power distribution limits for a gadolinia-urania fueled core will be based on approved BAW–10180, Rev. 1, NEMO methodology. NRC approval of GDTACO BAW–10184P will provide an approved methodology for predicting gadolinia-urania fuel rod behavior. All previous safety and design criteria will be met.

The proposed change to reference Topical Report BAW–10179P as the description of the methodologies and safety criteria applicable to fuel mechanical, nuclear, thermal-hydraulic, and reload safety analyses, is considered administrative since this Topical Report has been reviewed and approved by NRC.

The proposed changes to the BWST boron concentration requirement and Bases change to the minimum acceptable pH value have been evaluated and determined to have no affect on the consequences of an accident previously evaluated and continue to provide sufficient margin to the solubility limit in the core during long-term cooling. Additionally, the remaining proposed Bases revisions are editorial clarifications or corrections to the Bases description and do not revise the existing methods or criteria used to establish these limits.

Therefore, the proposed changes do not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different king of accident from any previously evaluated. The use of gadolinia-urania fuel rods has been adequately demonstrated and bench-marked by B&W.

An approved methodology will be used to predict gadolinia-urania fuel rod behavior.

The proposed change to reference approved Topical Report BAW–10179P will continue to ensure that approved methods and criteria are used to establish core operation limits.

The proposed changes to the BWST boron concentration and Bases change to the minimum acceptable pH value have no affect on the safety function of interfacing systems and components. Additionally, the remaining proposed Bases revisions are editorial clarifications or corrections and have no impact on the existing methods or criteria for establishing these limits.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. Existing margins of safety related to fuel rod performance are maintained with the use of gadolina-urania fuel rods, and existing approved methods and criteria for establishing core operating limits bound the predicted gadolinia-urania fuel rod behavior.

The proposed change to reference approved Topical Report BAW–10179P maintains existing margins of safety since previously approved methods and criteria are still used to establish core operating limits.

The proposed change to the BWST boron concentration results in a minimal change to the previously accepted lower pH value of the reactor building spray and sump inventory. This change has no affect on materials compatibility, criteria for environmental qualification of equipment, or the potential for boron precipitation. Additionally, the remaining proposed Bases revisions are editorial clarifications or corrections and have no potential to impact margins of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10

CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first rehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 7, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 2nd day of August 1993.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–18929 Filed 8–6–93; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2662; Amdt. #2]

Illinois; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective July 27, 1993 to include Greene County in the State of Illinois as a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing.

In addition, applications for economic injury loans from small business located in contiguous Morgan County, Illinois may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

The economic injury number of Illinois is 793200.

All other information remains the same, i.e., the termination date for filing

applications for physical damage is September 9, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–18933 Filed 8–6–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2663; Amdt. 1]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated July 21, 1993 to include the counties of Adair, Caldwell, Johnson, Livingston, Macon, Pemiscot, Pettis, Putnam, Scott, and Scotland in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Dunklin, Mississippi, New Madrid, Schuyler, Stoddard, and Sullivan Counties in Missouri; Mississippi County in Arkansas; and Dyer and Lake Counties in Tennessee.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 7, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury numbers are 793300 for Missouri; 793700 for Arkansas; and 795600 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–18934 Filed 8–6–93; 8:45 am]

BILLING CODE 8025–01–M

Small Business Size Standards; Environmental Services

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given that the interim size standard of $18.0 million in average annual receipts established by the Small Business Administration (SBA) for Environmental Services under Standard Industrial Classification (SIC) code 8744 has been judicially vacated.

DATES: This Notice applies immediately to all procurement requirements involving environmental services, including all those for which solicitations have been issued but award has not been made, using SIC code 8744 and the corresponding $18.0 million size standard for environmental services thereunder.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff, at (202) 205–6618.

SUPPLEMENTARY INFORMATION: On January 13, 1993, SBA published an interim final rule in the **Federal Register**, 58 FR 4074, that established a size standard of $18.0 million in average annual receipts for Environmental Services. SBA determined Environmental Services to be an emerging industry which the current SIC code system and its corresponding size standards did not adequately address. As such, SBA defined a new component of SIC code 8744 to be the emerging industry of Environmental Services and established an $18.0 million size standard for it. On June 23, 1993, the United States District Court for the District of Columbia held that SBA's publication of that size standard as an interim final rule violated applicable provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, requiring notice and public comment as part of an agency's rulemaking procedures. *Analysas Corp. v. Bowles*, No. 93–0711, slip op. (D.D.C. June 23, 1993). Because applicable provisions of the APA were not followed, the Court vacated the $18.0 million size standard. *Id.* at 10. As a result of this decision, the $18.0 million size standard for Environmental Services under SIC code 8744 is not in effect.

Dated: July 15, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–18932 Filed 8–6–93; 8:45 am]

BILLING CODE 8025–01–M

[License No. 07/07–0087]

United Financial Resources Corp.; Filing of an Application for an Exemption Under Regulation 107.903 Governing Conflicts of Interest

Notice is hereby given that United Financial Resources Corp. (the Licensee), 7401 "F" Street, Omaha, Nebraska 68127, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the U.S. Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903(b) (1993)) for an exemption from the provisions of the cited Regulations.

Subject to SBA approval, the Licensee proposes to provide funds to an associate, Ames Avenue Corporation d/b/a Phil's Foodway (Ames), 3030 Ames Avenue, Omaha, Nebraska 68111, to be used for working capital.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Mr. Phil Morrison is a director of the Licensee's parent, United-A.G. Cooperative, Inc. (UAG) which owns 100% of the Licensee, and is also an owner of Ames.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Omaha, Nebraska.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 13, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–18931 Filed 8–6–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 30, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49059

Date filed: July 29, 1993

Parties: Members of the International Air Transport Association
Subject:
TC1 Reso/P 0414 dated July 23, 1993;
TC1 Longhaul Expedited Resos r–1 to r–8
Proposed Effective Date: Expedited September 1, 1993

Docket Number: 49060
Date filed: July 29, 1993
Parties: Members of the International Air Transport Association
Subject:
TC1 Resos/P 0415 dated July 23, 1993
TC1 Within South America Expedited Reso 070j
Proposed Effective Date: Expedited September 1, 1993

Docket Number: 49061
Date filed: July 29, 1993
Parties: Members of the International Air Transport Association
Subject:
TC12 Reso/P 1511 dated June 29, 1993
Mid Atlantic-Europe/Mideast Reso r–1
TC12 Reso/P 1512 dated June 29, 1993
Mid Atlantic-Europe Resos r–1 to r–12
TC12 Resos/P 1513 dated June 29, 1993
Mid Atlantic-Mideast Resos r–13 to r–22
Proposed Effective Date: October 1, 1993

Docket Number: 49062
Date filed: July 29, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Mail Vote 644—Amend Rounding Units for China
Proposed Effective Date: August 10, 1993

Docket Number: 49064
Date filed: July 29, 1993
Parties: Members of the International Air Transport Association
Subject:
TC1 Reso/C 0249 dated May 18, 1993 r1–r4
TC1 Reso/C 0250 dated May 18, 1993 r5–r9
TC1 to/from USA/UST Cargo Resos
Airline Economic Justifications; Tables—TC1 Rates 0065 dated June 11, 1993
Proposed Effective Date: August 1/ October 1, 1993

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–18955 Filed 8–6–93; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 30, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49066
Date filed: July 29, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 27, 1993
Description: Application of Lauda Air S.p.A., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property and mail between a point or points in the Republic of Italy and a point or points in the United States.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–18956 Filed 8–6–93; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review, Capital City Airport, Lansing, MI

AGENCY: Federal Aviation Administration. DOT.
ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Capital City Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by Capital Region Airport Authority. This program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR part 150 for Capital City Airport were in compliance with applicable requirements effective June 29, 1993. The proposed noise compatibility program will be approved or disapproved on or before January 23, 1994.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the noise compatibility program is July 27, 1993. The public comment periods ends September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Community Planner, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Capital City Airport which will be approved or disapproved on or before January 23, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Capital City Airport, effective on July 27, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 23, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150 § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably

consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Great Lakes Regional Office, 2300 East Devon Avenue, Des Plaines, IL 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Capital Region Airport Authority, Capital City Airport, Lansing, MI 48906.

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Belleville, Michigan, on July 27, 1993.

Dean C. Nitz,

Manager, Detroit Airports District Office, FAA Great Lakes Region.

[FR Doc. 93–18958 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc. Technical Management Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for RTCA Technical Management Committee meeting to be held August 27, 1993. Meeting place to be determined.

The agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approve summary of the July 14, meeting; (3) Consider/approve: (a) RTCA Special Committee 159 Minimum Aviation System Performance Standards for DGNSS Instrument Approach Systems Special Category I (SCAT–1) (b) RTCA Special Committee 159—Change 1 to DO–208, Minimum Operational Performance Standards for Airborne Supplemental Navigation Equipment Using Global Positioning System (c) RTCA Special Committee 142–DO–203A, Minimum Operational Performance Standard for Mode S Airborne Data Link Processor (d) RTCA Special Committee 169—Minimum Operational Performance Standards for ATC Two-Way Data Link Communications, Draft 10; (4) Review status of Technical Management Committee restructuring initiative; (5) Review status of RTCA Special Committees; (6) Other Business; (7) Date and Place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 3, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–18961 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–62–M

RTCA, Inc. Special Committee 165; Meeting

Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services; Tenth Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 165 Meeting to be held August 11–13, 1993, in the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the summary of the ninth meeting; (3) Working Group Reports: (a) Equipment Standards Working Group (WG–1) Report, (b) Service Performance Criteria Working Group (WG–3) Report, (c) Satellite Voice Communications Working Group (WG–5) Report; (4) Review proposed modifications to the AMSS MOPS (RTCA Document No. DO–210); (5) Review proposed final draft of the document "Guidelines on AMS(R)S Voice Implementation and Utilization. (This is referred to by WG–5 as "Ralph-Third Draft"); (6) Assignment of tasks/review plans for future work; (7) Other Business; (8) Date and Place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 3, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–18960 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–62–M

RTCA, Inc. Task Force 2 Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for RTCA Task Force 2 meeting to be held August 17, 1993, at the Software Productivity Consortium (SPC), 2214 Rock Hill Road, Herndon, Virginia.

The agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Presentation by Co-Chairman from each working group: (a) Operational requirements, (b) Institutional issues, (c) Technology choices and opportunities; (3) Break at 10:30 a.m.; (4) Separate but Concurrent Working Group Deliberations; (5) Task Force 2 Plenary Discussion; (6) Meeting Summary.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140, Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 3, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–18959 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–62–P

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at New Hanover International Airport, Wilmington, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at New Hanover International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L.

101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 8, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, Atlanta, Georgia 30349.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert J. Kemp, Airport Director, New Hanover International Airport, 1740 Airport Boulevard, Wilmington, NC 28405.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the New Hanover International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Walter Bauer, Program Manager, Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, Atlanta, Georgia, 30349, telephone (404) 994–5306. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at New Hanover International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 30, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by New Hanover International Airport was substantially complete within the requirements of § 158.25 of part 158.

The FAA will approve or disapprove the application, in whole or in part, no later than November 3, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 2, 1994.

Proposed charge expiration date: June 30, 1997.

Total estimated PFC revenue: $1,505,000.

Brief description of proposed projects:

Recover local participation on four existing AIP projects
Study to define land/easement acquisition needs
Land acquisition (phase I)
Taxiway B extension and widening
Taxiway lighting systems rehabilitation
Acquisition of ramp sweeper
Install vertical guidance slope indicator—runway 35
Reconstruct taxiways A and H and taxiway connectors to runway 17/35
Construct taxiway connectors to runway 6/24
Construct taxiway connectors to runway 17/35
Fencing and security road construction
Airport Master Plan update

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand air taxi/commercial operators filing FAA Form 1800–31 enplaning less than 150 passengers per year at New Hanover International Airport.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the New Hanover International Airport.

Issued in Atlanta, Georgia, on August 2, 1993.

Stephen A. Brill,

Manager, Airports Division Southern Region.

[FR Doc. 93–18957 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Chesapeake, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice of intent to advise the public that an environmental impact statement will be prepared for a proposed highway project in Chesapeake, Virginia.

FOR FURTHER INFORMATION CONTACT: Allen Masuda, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone 804/771–2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to widen existing Route 17—George Washington Highway in Chesapeake, Virginia. The proposed project would involve construction of a multi-lane, urban arterial in the western portion of Chesapeake, Virginia. The southern terminus is at the Virginia-North Carolina state line with the northern terminus at the intersection of Route 17 and Route 104—Dominion Boulevard. The length of the proposed project ranges from 9.8 miles to 12.5 miles, depending on the alternative.

Development of the proposed project is considered necessary to provide for efficient movement of both existing and projected traffic and provide relief to safety deficiencies experienced along existing Route 17.

Alternatives under consideration include: (1) Taking no action (no build); (2) transportation system management (improvement to existing roadway network); (3) mass transit; and (4) various build alternatives on both existing and new location. The build alternatives will incorporate variations of vertical and horizontal grade alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, private organizations, and citizens who have previously expressed or are known to have interest in this proposal. The scoping process is anticipated to begin in the late Summer or early Fall of 1993. A public informational meeting and a public hearing will be held in the future. Public notice will be given indicating the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this project.)

Issued on: August 2, 1993.

Allen Masuda,

District Engineer, Richmond, Virginia.

[FR Doc. 93–19036 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 2, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices/Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1505–0137
Form Number: TD F 90.22.45
Type of Review: Extension
Title: FinCEN Access Identification Form
Description: This collection will be used to ensure that confidential law enforcement information is provided only to authorized officials of state and local law enforcement agencies. The collected information will allow identities to be efficiently verified.
Respondents: State or local governments
Estimated Number of Respondents: 250
Estimated Burden Hours Per Response: 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 43 hours

OMB Number: 1505–0139
Form Number: TD F 90–22.44
Type of Review: Extension
Title: Request for Query/Analysis
Description: This form allows the efficient intake of requests for investigative support sent to the Financial Crimes Enforcement Network (FinCen) by Federal, State and local law enforcement. The information will provide the information necessary to determine the lawful parameters of data base searches in response to the requests.
Respondents: State or local governments, Federal agencies or employees
Estimated Number of Respondents: 4,800
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2,400 hours
Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 93–18963 Filed 8–6–93; 8:45 am]
BILLING CODE 4810–25–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 151
Monday, August 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following will be withdrawn from the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Tuesday, August 10, 1993, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC:

Memorandum and resolution re: Payment of claims arising from severance pay or "golden parachute" agreements of failed banks where employment has been terminated after bank failure.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: August 5, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-19168 Filed 8-5-93; 2:29 pm]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of August 9, 16, 23, and 30, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 9

Wednesday, August 11

2:00 p.m.
Briefing on Strategic Information Technology Plan (Public Meeting)
(Contact: Fran Goldberg, 301-492-7216)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 16—Tentative

Thursday, August 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 23—Tentative

Wednesday, August 25

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 30—Tentative

Tuesday, August 31

10:00 a.m.
Briefing on NRC Research Program on Aging (Public Meeting)
(Contact: John Craig, 301-492-3850)
11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: "Briefing on Status of Part 100 Rule Change and Proposed Update on Source Term and Related Issues" scheduled for August 2, was held on August 3.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504-1661.

Dated: August 4, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-19170 Filed 8-5-93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of August 9, 1993.

An open meeting will be held on Wednesday, August 11, 1993, at 10:00 a.m. A closed meeting will be held on Thursday, August 12, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and(10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, August 11, 1993, at 10:00 a.m., will be:

Consideration of whether to issue a release that will approve amendments to the net capital rule, Rule 15c-3-1 under the Securities Exchange Act of 1934, to make the rule applicable to certain specialists that are currently exempt from the rule and generally exempt such specialists from the rule's haircut and undue concentration deductions. For further information, please contact Michael A. Macchiaroli at (202) 272-2904.

The subject matter of the closed meeting scheduled for Thursday, August 11, 993, at 10:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272-2400.

Dated: August 3, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-19169 Filed 8-5-93; 2:29 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 58, No. 151
Monday, August 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Final Rule and Rule Amendments Concerning Composition of Various Self-Regulatory Organization Governing Boards and Major Disciplinary Committees

Correction

In rule document 93-16525 beginning on page 37644 in the issue of Tuesday, July 13, 1993, on page 37644 in the third column, under the **DATES** caption, in the second paragraph, the last sentence should read: "Each SRO must comply with § 1.64 (b)(2) and (3) as of the date of its next governing board election."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-28-AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

Correction

In proposed rule document 93-18419 beginning on page 41210 in the issue of Tuesday, August 3, 1993, make the following corrections:

1. On page 41210, in the first column, the Docket Number appearing in the heading of the document should read as set forth above.

2. On the same page, in the second column, under the **ADDRESSES** caption, in the first paragraph, in the fifth and sixth lines "Docket No. 93-NM-28-D" should read "Docket No. 93-NM-28-AD".

3. On the same page, in the same column, under the **FOR FURTHER INFORMATION CONTACT** caption, in the third line "ANM-13" should read "ANM-113".

4. On the same page, in the third column, in the first full paragraph, in the seventh line, "Docket Number 93-NM-28-D" should read "Docket Number 93-NM-28-AD".

5. On the same page, in the same column, under the heading **Availability of NPRMs**, in the fourth line, "ANM-03" should read "ANM-103" and in the fifth line "93-NM-28-D" should read "93-NM-28-AD".

§ 39.13 [Corrected]

6. On page 41211, in the second column, in § 39.13, the airworthiness directive heading should read "Fokker: Docket 93-NM-28-AD".

7. On the same page, in the same column, in paragraph (b), in the 5th and 11th lines "ANM-13" should read "ANM-113".

8. On the same page, in the same column, in the "Note" following paragraph (b), in the last line, "ANM-13" should read "ANM-113".

BILLING CODE 1505-01-D

federal register

Monday
August 9, 1993

Part II

Federal Trade Commission

16 CFR Part 308

Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992; Rule

FEDERAL TRADE COMMISSION

16 CFR Part 308

Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992

AGENCY: Federal Trade Commission.

ACTION: Final trade regulation rule.

SUMMARY: The Federal Trade Commission issues its final Rule pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA" or "the Act"). Titles II and III of the TDDRA directed the Federal Trade Commission ("FTC" or "Commission") to prescribe regulations, within 270 days of enactment on October 28, 1992, governing the advertising and operation of pay-per-call services, as well as billing and collection procedures for such services.

EFFECTIVE DATE: The Rule will become effective on November 1, 1993.

ADDRESS: Requests for copies of the Rule and the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Division of Marketing Practices: David Torok (202) 326–3140, Carol Jennings (202) 326–3010, or Heather McDowell (202) 326–3356; Division of Advertising Practices: Mary Koelbel Engle (202) 326–3161, or Marianne Kastriner (202) 326–3165; Division of Credit Practices: Ronald Isaac (202) 326–3231, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY IMFORMATION: The Rule: (1) Sets forth disclosures that must be included in advertisements for pay-per-call services (including the cost of the call, the odds of winning a sweepstakes, non-affiliation with the Federal government, and parental permission for those under 18), as well as certain standards for ensuring that these disclosures are "clear and conspicuous"; (2) requires, for all pay-per-call services costing more than $2.00, a preamble containing certain specified information; (3) prohibits pay-per-call programs, and advertisements for such programs, that are directed to children under 12; (4) prohibits charging callers to pay-per-call services if they hang up prior to three seconds after a signal or tone indicating the end of the required preamble; (5) prohibits the use of 800 or other toll-free numbers for providing pay-per-call services; (6) prohibits the use of electronic tones that can automatically dial a pay-per-call number; (7) requires certain disclosures for billing statements for pay-per-call services; and (8) sets forth procedures for the correction of billing errors for telephone-billed purchases.

Statement of Basis and Purpose

I. Introduction

Congress enacted the TDDRA, Pub. L. 102–556, to curtail certain unfair and deceptive practices engaged in by some pay-per-call businesses, and to encourage the continued growth of the legitimate pay-per-call industry.[1] Title I of the Act[2] directs the Federal Communications Commission ("FCC") to enact regulations defining the obligations of common carriers with respect to the provision of pay-per-call services.[3] Title II of the Act[4] directs the FTC to enact regulations governing the advertising and operation of pay-per-call services. It requires that certain disclosures appear in all advertising for such services and in preambles to pay-per-call programs. Moreover, it prohibits pay-per-call providers from engaging in certain practices, such as directing their services to children under the age of 12. In addition, the Act authorizes the Commission to prescribe other regulations it deems necessary to prevent abusive practices in this industry or to prevent evasion of these requirements. Title III of the TDDRA[5] directs the FTC to prescribe regulations establishing procedures for the correction of billing errors with respect to telephone-billed purchases. The Act grants the Commission limited jurisdiction over common carriers for purposes of this Rule.[6] Finally, the Act provides that for enforcement purposes, the Rule promulgated by the FTC will be treated as a rule issued under § 18(a)(1)(B), and enforced pursuant to section 5, of the FTC Act.[7]

The Commission published a Notice of Proposed Rulemaking ("NPR") in the **Federal Register** on March 10, 1993,[8] and a 30-day comment period closed on April 9, 1993. Comments were received from 99 companies, organizations, governmental entities, and individuals.

Seven commenters represent state and local government agencies. These include: The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General ("NAAG") (members of the Subcommittee include the Attorneys General of Arizona, California, Connecticut, Florida, Illinois, Iowa, Kansas, Maine, Minnesota, New Jersey, New Mexico, New York, Pennsylvania, Tennessee, Vermont, Washington, West Virginia, and Wisconsin); the National Association of Consumer Agency Administrators ("NACAA"); the National Association of Regulatory Utility Commissioners ("NARUC"); the California Public Utilities Commission ("CAPUC"); the New York State Department of Public Service ("NYDPS"); the National Association of State Utility Consumer Advocates ("NASUCA"); and the Attorney General for the State of North Carolina (the latter two both joining the comments of NAAG). One Federal agency, the U.S. Postal Service ("USPS"), submitted comments.

Three public interest organizations filed comments: Consumer Action ("CA"); the National Consumers League ("NCL"); and (jointly) the Center for Media Education and the National PTA ("CME"). Thirteen common carriers, or associations representing common carriers, filed comments: American Telephone and Telegraph Company ("AT&T"); the Ameritech Operating Companies ("Ameritech"); the Bell Atlantic Telephone Companies ("Bell Atlantic"): BellSouth Telecommunications, Inc. ("BellSouth"); GTE Service Corporation ("GTE"); MCI Telecommunications Corporation ("MCI"); the National Telephone Cooperative Association ("NTCA"); NYNEX Telephone Companies ("NYNEX"); Pilgrim Telephone, Inc. ("Pilgrim"); Southwestern Bell Telephone Company ("Southwestern"); Sprint Corporation ("Sprint"); US West, Inc. ("US West") and the United States Telephone Association ("USTA").

Fifty-five information providers, and associations representing information providers, service bureaus and other related businesses, filed 15 discrete comments. Forty-one information providers (collectively referred to as "Fun Lines") filed identical copies of

[1] 15 U.S.C. 5701(b).

[2] 47 U.S.C. 228.

[3] The FCC published its Notice of Proposed Rulemaking and Notice of Inquiry at 58 FR 14371 (March 17, 1993).

[4] 15 U.S.C. 5711–14.

[5] 15 U.S.C. 5721–24.

[6] In general, common carriers are not subject to the jurisdiction of the FTC Act. 15 U.S.C. 45(a)(2).

[7] 15 U.S.C. 57a(a)(1)(B); 15 U.S.C. 45.

[8] 58 FR 13370. The record of this proceeding has been designated by the number R311001. The record contains the following three categories of documents: Category A includes **Federal Register** notices and notifications concerning the public workshop conference; Category D includes comments filed in response to the NPR; and Category L includes the transcripts of the public workshop conference.

the same comment.[9] The other 14 comments from this sector of the industry came from the following parties: The Association of Information Providers of New York and Info Access, Inc. (filing jointly) ("AIP"); Call Interactive; Cox Enterprises, Inc. ("Cox"); ICN Corporation ("INC"); the Information Industry Association ("IIA"); the Interactive Information Services Council ("IISC"); Meganews; Money Minds, the National Association for Information Services ("NAIS");[10] New Insights, Inc. ("NII"); Phone Programs, Inc. ("PPI"); The Suarez Corporation ("Suarez"); Tele-Publishing, Inc. ("TPI"); and USA Today Information Center ("USA Today").

Three organizations representing advertising interests filed comments: the American Advertising Federation ("AAF"); the American Association of Advertising Agencies, Inc. ("AAAA"); and the Association of National Advertisers, Inc. ("ANA").[11] Two companies that provide third-party (non-common carrier) billing services for pay-per-call services, International Telemedia Associates, Inc. ("ITA") and VRS Billing Systems, Inc. ("VRS"), filed comments.

Others filing comments included three individual consumers (Alberta Buschmann, Marie Stevens, and Brad S. Parker) and the following 12 organizations or companies: Amalgamated MegaCorp ("Amalgamated"); the American Society of Travel Agents, Inc. ("ASTA"); Capital Cities/ABC, Inc. ("ABC"); the Children's Advertising Review Unit of the Council of Better Business Bureaus, Inc. ("CARU"); the Direct Marketing Association ("DMA"); Grocery manufacturers of America, Inc. ("GMA"); Kellogg Company ("Kellogg"); the National Infomercial Marketing Association ("NIMA") ; the Newspaper Association of America ("NAA"); the Promotion Marketing Association of America, Inc. ("PMA"); Summit Telecommunications Corporation ("Summit"); and the Yellow Pages Publishers Associations ("YPPA").

On April 22 and 23, 1993, Commission staff conducted a public workshop conference at the FTC headquarters. Those interested parties wishing to participate in the Conference were required to notify Commission staff by March 25, 1993. Commission staff were able to include all parties that gave timely notice of interest in participating. Participants included: AAAA, AAF, AIP, ANA, AT&T, CARU, CME, GMA, ICN, IIA, IISC, ITA, MCI, NAAG, NACAA, NAIS, NARUC, NCL, Pilgrim, PPI, TPI, and USTA. Howard Bellman served as a conference facilitator.[12] Participants discussed various aspects of the proposed regulations, including pay-per-call service standards, advertising requirements, and procedures for the resolution of billing disputes. They addressed each other's comments and questions and responded to questions from FTC staff members. The conference was open to the public, and comments from members of the public were invited each day. Mr. Blake Barker, of USA Today—Gannett Company, addressed the conference on both days during the public participation segment. The entire proceeding was transcribed and the transcript was placed on the public record.[13]

II. The Rule

A. *Section 308.2: Definitions*

The proposed rule defined the following terms: Bona fide educational service, Commission, pay-per-call services, person, presubscription or comparable arrangement, program-length commercial, provider of pay-per-call services, reasonably understandable volume, slow and deliberate manner, and sweepstakes.[14] The Commission sought comment as to whether these definitions were clear, meaningful, and appropriate.[15]

In the final Rule, the Commission has modified the definitions of three of these terms: Bona fide educational service (§ 308.2(a)); presubscription or comparable arrangement (§ 308.2(e)); and provider of pay-per-call services (§ 308.2(g)). In addition, the Commission has added a definition of the term "service bureau" (§ 308.2(i)), since it has determined that service bureaus should bear some liability for violations of the Rule by pay-per-call services using their call processing facilities. All other definitions have been adopted in the final Rule without change.

1. *Section 308.2(a): Definition of "Bona Fide Educational Service"*

The proposed rule in § 308.2(a) defined the term "bona fide educational service" to be any pay-per-call service that provides information or instruction relating to education, subjects of academic study, or other related areas of school study. The term describes the one statutorily-permitted exception to the prohibition against pay-per-call services directed to children under the age of 12 and advertisements for such services. The proposed rule defined such services solely in terms of the content of the pay-per-call service itself without reference to the party offering the service.

In the NPR, the Commission asked specifically whether the proposed definition was sufficiently narrow so as not to allow the exception to swallow the rule. The Commission also asked whether the definition should include an additional requirement concerning the nature of the party offering the pay-per-call service and, if so, what requirement should be used to include only those providers with a legitimate connection to education. Finally, the Commission asked whether another approach to defining the term "bona fide educational service" would be more useful.[16] Responsive comments were sharply divided. Some contended that the definition contained in the proposed rule was so broad as to virtually swallow the prohibition against services directed to children. Those commenters urged the Commission to include a requirement that bona fide educational services be provided only by individuals or organizations with a

[9] Fun Lines, Inc., A Personal Encounter, Inc., Advanced Gateways, Advanced Telecom Services, Inc., Almarc Communications, American International Communications, Chase Companies, CommNet, Inc., ConnecTec Corporation, Dobbs Enterprises, Ltd., Durango Associates, Fones, Inc., Gigaphone, Inc., Halo Communications, Independent Entertainment Group, Jamestown Entertainment, Inc., Jartel, Inc., Kaos Communications, Kuryl Communications, LO/AD Communications, National Automobile Data Service, National Communications Team, National Network, Inc., New Media Telecommunications, Inc., Northwest Nevada Telco, Pacific Teleconnect, Inc., Real People, Ltd., Ryder Communications, Inc., Seascape Productions, SimTel Communications, Source Communications, Talk Show, Inc., Telecharge Audio Network, Telecharge Support Systems, The Advantage Group, Inc., The Scoreboard, Inc., TVTV, Twelve Signs, Inc., Uni-Access Company, Worthington Voice Services, Inc., and 123 Communications.

[10] NAIS also filed with the FTC a copy of its comments filed in the FCC rulemaking pursuant to the TDDRA. (FCC, In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, RM 7990.) These comments were appended to the NAIS FTC comments (number 63).

[11] In addition to their comments filed during the 30-day comment period, AAAA and ANA addressed letters to each of the Commissioners prior to publication of the NPR. Representative copies of these letters have been placed on the public record as part of the comments filed in response to the NPR.

[12] Mr. Bellman is a mediator from Madison, Wisconsin. His cases have included mediations of state and federal public policy issues.

[13] References to the conference transcript are cited as "Tr." followed by the appropriate page designation. References to comments are cited as "Comment (public record comment number) (name of commenter) at (page number)."

[14] 58 FR at 13364–65.

[15] 58 FR at 13380 (questions 1 and 2).

[16] 58 FR at 13380 (question 2). The Commission did not receive any feasible alternative suggestions.

genuine connection to the field of education.[17] Others argued that the proposed definition already was sufficiently narrow, and that such an additional restriction would unfairly prohibit many companies, such as those offering computer support services, from providing valuable information to children under 12.[18] Several commenters also urged the Commission to interpret the term broadly to permit pay-per-call providers to offer young children services pertaining to topics other than traditional academic subjects, and presented in formats such as contests and games.[19] Others contended that such services should not qualify for the exemption.[20]

The Commission is not persuaded that the definition of the term "bona fide educational service" should be expanded or interpreted broadly in any manner. Congress clearly was concerned about pay-per-call services directed to children, and intended to permit only a narrow exemption to the ban. The explicit language in the TDDRA—the use of "bona fide" to modify "educational service"—is itself an indication that Congress intended that the exemption apply only to services of a genuinely educational nature. Moreover, in discussing the scope of the ban, the Senate Report stated:

> This ban does not extend to educational services to ensure that children have access to such programs. The Committee recognizes that some of these (pay-per call) programs are provided through schools, and therefore the children's use of these programs is supervised.[21]

Based on the written comments, the discussion at the public workshop conference, and review of the legislative history, the final Rule has been modified slightly to clarify the intended scope of the definition to insure that it is consistent with the congressional mandate for a narrow exception. The final Rule clarifies what was intended by the proposed rule as to the type of service that would qualify as a bona fide educational service. While the proposed rule defined the term to mean any service "*that provides* information" (emphasis added), the final Rule modifies the underlined phrase to require that the service be "*dedicated to providing* information" (emphasis added). After reviewing the comments and the transcript of the public workshop conference, the Commission determined that the proposed definition inadvertently may have permitted pay-per-call services containing only an incidental educational component to be directed to children under 12.[22] For example, a pay-per-call service featuring a popular cartoon character who offered to talk to children and, incidentally, to send them a series of math cards, charged to their parent's telephone bill, may have qualified under the proposed definition. The Commission believes that a service containing such an incidental educational component should not qualify for the "bona fide educational service" exemption under the Rule. On the other hand, if an encyclopedia publisher offered a geography lesson through a pay-per-call service, use of a cartoon character or well-known child star would not necessarily remove the service from the exemption. By using the phrase "dedicated to providing," the Commission intends to convey that this exemption is limited to those pay-per-call services of a genuinely educational nature. Accordingly, the Commission has modified § 308.2(a) of the final Rule.

2. *Section 308.2(c): Definition of "Pay-Per-Call Service"*

The definition of "pay-per-call service" (§ 308.2(c)) remains the same as it was in the proposed rule.[23] The term is defined in the TDDRA by reference to section 228 of the Communications Act of 1934.[24] The service provided may be audio information, audio entertainment, access to simultaneous voice conversation services, or any service, including provision of a product, for which the charges are assessed on the basis of the completion of the call. The caller pay a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call. The call is accessed through use of a 900 telephone number of other prefix or area code designated by the FCC for such services. However, the term does not include directory services provided by a common carrier or local exchange carrier; any service for which the charge is tariffed; or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of the service.

One commenter suggested that the Commission's Rule should extend to pay-per-call programs available through seven-digit local numbers (with a 976, 960 or other prefix) or through abbreviated N11 dialing arrangements.[25] Such calls would not fall within the statutory definition of "pay-per-call services" because they are not reached through a service access code designated by the FCC in accordance with the Communications Act.[26] US West, on the other hand, requested clarification that the FTC Rule will not apply to local pay-per-call numbers.[27]

The Commission is incorporating into the Rule the definition of "pay-per-call service" in the TDDRA. The Rule covers those pay-per-call services accessed through use of a 900 telephone number, as designated pursuant to FCC regulations.[28] There is no evidence of congressional intent that the Commission extend its Rule to cover pay-per-call programs accessed through local prefixes not designated by the FCC. Moreover, the record does not show evidence of deceptive or unfair practices, associated with use of such numbers, that have not or cannot be addressed by state regulatory or law enforcement authorities. In fact, title I of the TDDRA specifically recognizes state authority to regulate such services.[29]

---

[17] Comments 31 (CA) at 2, 4; 40 (NACAA) at 3; 53 (CME) at 2, 5–9.

[18] Comments 30 (CARU) at 3; 34 (TPI) at 6; 37 (PPI) at 27–28; 41 (Kellogg) at 2; 63 (NAIS) at 27–28; Tr. at 395–98, 405–06.

[19] Comments 30 (CARU) at 3; 35 (AIP) at 2–3; (PPI) at 27–28; 63 (NAIS) at 27–28; Tr. at 403–04.

[20] Comments 40 (NACCAA) at 3; 53 (CME) at 5–9; Tr. at 403, 406.

[21] Senate Committee Report on S. 1579, S. Doc. No. 190, 102d Cong., 1st Sess. (1991) ("Senate Report") at 6. The TDDRA (Pub. L. No. 102–556, formerly H.R. 6191) is a combination of prior bills passed in each house of Congress during 1991 and early 1992. The Senate bill, S. 1579, and the House bill, H.R. 3490, were joined in conference in the 1992 session. There is no report on the bill as passed.

[22] Comment 53 (CME) at 6–7; Tr. at 407.

[23] 58 FR at 13384–85.

[24] 15 U.S.C. 5714(1); 47 U.S.C. 228(i).

[25] Comment 46 (Cox) at 7–8.

[26] 47 U.S.C. 228(b)(5).

[27] Comment 47 (US West) at 2 and 6. US West explained that although most such calls would be intrastate in nature, its local exchange carrier does have certain local pay-per-call services that cross state lines even though accessed by dialing a local number.

[28] Pursuant to 47 CFR 64.1506, any service described in 47 CFR 64.1501(a)(1)–(2) (which is the same as § 308.2(c)(1)(A)–(B) of this rule) shall be offered "only through telephone numbers beginning with a 900 service access code." The FCC rule, at 47 CFR 64.1505(a), also prohibits carriers from providing interstate transmission services to an entity offering any service within the scope of 47 CFR 64.1501(a)(1) (which is the same as § 308.2(c)(1)(A) of this Rule) that is billed to a telephone subscriber on a collect basis at a rate above the tariffed rate for transmission of the call. Some commenters suggested that the Commission consider prohibiting collect pay-per-call services entirely or expanding the definition of a "pay-per-call service" to include those services charged to the customer on a collect basis. Comments 10 (NARUC) at 9–10; 15 (Nynex) at 2. However, it appears that it is now unnecessary for the Commission to address this issue.

[29] 47 U.S.C. 228(g)(4) states: "Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures govern intrastate services and do not significantly impede the enforcement of this section or other Federal statutes."

Accordingly, the final rule does not cover intrastate pay-per-call numbers.

3. *Section 308.2(e): Definition of "Presubscription or Comparable Arrangement"*

The definition of "presubscription or comparable arrangement" is important to the effectiveness of the Rule because any call placed pursuant to such an agreement is not afforded the protection of these regulations. The proposed definition required that a contractual agreement be established prior to the placement of a call to a pay-per-call service.[30]

Some parties noted the importance of having consistent definitions of this term by the FCC and the FTC.[31] Both agencies are using the same definition. In addition, several commenters suggested that the definition should be more specific, setting forth the required elements of the contractual agreement.[32] The definition in the final Rule has done this. In order to have a presubscription agreement, the service provider must clearly and conspicuously disclose to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service. In addition, the service provider must agree to notify the consumer of any future rate changes. The consumer must affirmatively agree to utilize the service on the terms and conditions disclosed by the service provider. Finally, the service provider must require the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers. These added requirements should ensure that any consumer entering a presubscription arrangement does so knowingly and with full disclosure of the terms of the agreement. Moreover, there seemed to be general agreement at the public workshop conference that the terms listed above should be part of any presubscription arrangement.[33]

In addition, NACAA urged that the definition require a written agreement, signed by the consumer.[34] NAAG suggested that the terms of the agreement be set forth in a written document.[35] Some industry groups, on the other hand, proposed that the Rule allow establishing such an agreement by telephone.[36] They noted that this is an industry accustomed to conducting business by telephone.

The Commission does not believe it necessary to require that a presubscription arrangement be contained in a signed, written agreement. If all of the required elements of presubscription can be achieved, to the satisfaction of both parties to the contract, without a written agreement, the parties should be free to exercise this option.[37]

IIA and Pilgrim requested that the definition include use of a charge or credit card.[38] IIA noted that Congress did not intend to include credit card transactions within the TDDRA. The Commission agrees with IIA that it appears Congress did not intend that services paid for by credit or charge card be included within this Rule.[39] In such transactions, the charge is not assessed on the basis of the completion of the call; rather the charge is assessed when the consumer provides the seller a credit or charge card number and authorizes a charge to the account. Moreoever, such transactions already have the protection of the Truth in Lending Act and the Fair Credit Billing Act.[40] Accordingly, the definition of "presubscription or comparable arrangement" has been modified to include those transactions where the consumer pays by authorizing a charge to a credit or charge card that is subject to the requirements of those statutes.[41] No other action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating a presubscription agreement. However, such an agreement, provided it meets the criteria set forth in § 308.2(e)(1), could be established during the course of a call to an 800 telephone number or any other local or long distance telephone number.

4. *Section 308.2(g): Definition of "Provider of Pay-Per-Call Services"*

The proposed rule defined "provider of pay-per-call services" as "any person who sells a pay-per-call service."[42] Several parties commented that this definition was ambiguous and perhaps overly broad.[43] MCI requested clarification that the Commission did not intend the definition to encompass a carrier merely providing transmission or billing and collection services for a pay-per-call service.[44] In the final rule, the Commission has modified the definition accordingly.

In addition, the Commission has added language to make clear that the term includes any person who *offers* to sell a pay-per-call service. This ensures that the Rule covers anyone advertising such a service even before any completed calls have taken place.

5. *Section 308.2(i): Definition of "Service Bureau"*

As discussed in part II.D.12, *infra*, § 308.5(1) of the Rule imposes liability on a service bureau where it knew or should have known of violations of the Rule by pay-per-call providers using its call processing facilities. Therefore, the Commission has defined the term "service bureau" in § 308.2(i). The definition is consistent with industry usage of the term.[45] Service bureaus may perform a variety of services for pay-per-call providers. However, the key services are providing access to telephone service and voice storage. The definition also makes clear that common carriers are not considered service bureaus for purposes of the Rule.

B. *Section 308.3: Advertising of Pay-Per-Call Services*

Section 308.3 of the Rule sets forth the requirements for advertising pay-per-call services, including both what must be disclosed and how the disclosures must be made. To implement the TDDRA's requirements that disclosures be made "clearly and conspicuously," the proposed rule set forth detailed requirements as to what constituted "clear and conspicuous" disclosures. In the NPR, the Commission specifically sought comment on the advantages and disadvantages of providing detailed

[30] 58 FR at 13385.

[31] Comments 32 (MCI) at 1–2; (NAIS) at 6–7.

[32] Comments 23 (VRS) at 5; 33 (ITA) at 4–5; 63 (NAIS–FCC comments) at 3–5; 81 (Sprint) at 3–6.

[33] Tr. at 50–67.

[34] Comment 40 (NACAA) at 3.

[35] Comment 42 (NAAG), Attachment 1 at 1.

[36] Comments 23 (VRS) at 3–5; 35 (AIP) at 3; 54 (Amalgamated) at 3; 63 (NAIS) at 30.

[37] Of course, any business claiming exemption from the requirements of this Rule by virtue of a presubscription arrangement will bear the burden of proof that a valid agreement, meeting the requirements of § 308.2(e), has been established.

[38] Comments 52 (IIA) at 15–20; 60 (Pilgrim) at 7.

[39] Senate Report at 12.

[40] 15 U.S.C. 1601 *et seq.*

[41] The Rule makes clear that to qualify as a "presubscription arrangement," the calling party not only must disclose a credit or charge card number during the course of the call, but also must authorize a charge to that account for the service being called. CA pointed out that in some instances a credit or charge card number is requested as a screening device, with the actual charge then being billed on the telephone bill or through a third-party billing entity. Comment 31 (CA) at 1–2. The Commission is also aware of instances where telemarketers have requested a credit or charge card number, ostensibly "for identification purposes," then billed a charge to that account even though the customer never authorized such a charge.

[42] 58 FR at 13385.

[43] Comments 33 (ITA) at 5–6; 37 (PPI) at 27; 59 (USPS) at 1–2.

[44] Comment 32 (MCI) at 3–4.

[45] *See, e.g.*, Infotext Publishing, Inc., *The 1992 Telemedia Almanac, pp. 39–56 (1992).*

requirements for "clear and conspicuous" disclosures versus other approaches, such as performance standards and safe harbors.[46] Many commenters, particularly those representing the advertising industry, urged the Commission not to impose specific standards for disclosures, other than the statutorily required "clear and conspicuous" standard.[47] In contrast, many other commenters expressed agreement with the need for further guidance as to what "clear and conspicuous" means in the context of pay-per-call service advertisements, while disagreeing about the particulars of what that guidance should be.[48]

The Commission believes that merely requiring disclosures to be "clear and conspicuous" would not provide a useful guide of conduct for those affected by the regulations, nor would it adequately safeguard the interests of consumers in being informed of the required disclosures. The TDDRA itself mandates that the Commission "prescribe rules * * * (that) shall require" that various disclosures be made "clearly and conspicuously."[49] Moreover, the legislative history makes clear that Congress was concerned about the inadequacy of pay-per-call service advertisement disclosures,[50] and continued monitoring by Commission staff indicates that this remains a problem.

A number of commenters asserted that the "clear and conspicuous" standard is adequate.[51] In its comment, PMA stated that it endorses the Commission's previous enforcement policy statement that set standards for "clear and conspicuous" television disclosures,[52] and, referring to the sweepstakes industry, stated that these standards "are widely accepted and have become industry practice."[53] Nevertheless, the Commission's own observation of disclosures in sweepstakes promotions indicates that in some instances disclosures are being made in a fashion that may not be clear and conspicuous.[54] In this context, the Commission is concerned that merely requiring disclosures to be "clear and conspicuous" does not provide adequate guidance to the advertising community about what the Commission believes would satisfy such a standard. The legislative history indicates that Congress anticipated that the Commission would use its discretion to adopt more specific standards than a bare "clear and conspicuous " standard.[55] Accordingly, § 308.3 of the final Rule provides specific requirements for "clear and conspicuous" disclosures.

A number of commenters recommended that, if the rules contained guidance as to the particulars of "clear and conspicuous" disclosures, the particulars should be given in safe harbors, rather than in requirements.[56] The Commission rarely employs safe harbors in rulemakings and has decided against a safe harbor approach in this rulemaking. The advertising disclosure provisions of this Rule will be enforced by the attorneys general of the 50 states, as well as by the Commission.[57] The Commission believes that specificity in the standards for advertising disclosures is important to ensure uniform enforcement standards. If a safe harbor approach were adopted and advertisers chose not to comply with the safe harbor, the Commission and the state attorneys general would still be required to decide and prove *de novo*, on a case-by-case basis, that the disclosures were not clear and conspicuous. Moreover, the Commission and the state attorneys general would have to decide what level of communication of the disclosure to consumers would satisfy the "clear and conspicuous" requirement. The legislative history, as well as the experience of the Commission,[58] the state attorneys general,[59] consumer protection agencies,[60] and the U.S. Postal Service,[61] indicates widespread failure to make full and clear disclosure in advertisements for pay-per-call services.

Given this background, the Commission believes that specifying clear requirements as to what constitutes a "clear and conspicuous" disclosure is the appropriate approach in this rulemaking. For certain critical disclosures, including the cost and the parental permission advisory, the Commission has adopted very specific requirements. For other disclosures, it has adopted a more flexible approach while at the same time providing guidance beyond a minimal "clear and conspicuous" standard.

1. *Section 308.3(a): General Requirements*

Each section of the proposed rule mandating a disclosure required that the disclosure be presented clearly and conspicuously and explained how the disclosures were to be made "clearly and conspicuously." While the proposed rule contained certain minimum standards applicable to all disclosures in advertisements, these minimum standards were not set out separately, but rather were contained within each section, along with any further requirements for disclosures under those specific sections.

This format was not raised as an issue for comment and was not specifically addressed in the comments. However, a number of commenters suggested modifications to or exceptions from various sections of the proposed rule, and the final Rule has been revised to address some of those suggestions. After revision, some of the descriptions of what constituted "clear and conspicuous" disclosures became rather lengthy and, therefore, difficult to follow. Accordingly, the Commission thought it appropriate to reorganize the advertising section so that the requirements common to each of the sections so that the requirements common to each of the sections are

---

[46] 58 FR at 13380–81 (question 15). To the extent that the Commission has not prescribed language to be used in making the required disclosures, the Commission has adopted a performance standard, *i.e.*, advertisers must ensure that the language they choose conveys the required information to consumers.

[47] Comments 14 (AAAA) at 6; 19 (AAF) at 4; 39 (IISC) at 16; 43 (GMA) at 20; 45 (ANA) at 4; 51 (USA Today) at 11; 58 (PMA) at 2.

[48] Comments 5 (Fun Lines) at 1; 35 (AIP) at 4; 37 (PPI) at 28–29, 34, 37; 46 (Cox) at 4–5; 61 (ICN) at 3; 80 (Suarez) at 2.

[49] 15 U.S.C. 5711(a)(1).

[50] House Committee Report on H.R. 3490, H.R. Doc. No. 430, 102d Cong., 2d Sess. (1992) ("House Report") at 4–6; Senate Report at 3, 8.

[51] Tr. at 342; Comments 14 (AAAA) at 6; 19 (AAF) at 4; 39 (IISC) at 16; 43 (GMA) at 20; 45 (ANA) at 4; 51 (USA Today) at 11; 58 (PMA) at 2.

[52] "Clear and Conspicuous" Disclosure, 3 Trade Reg. Rep. (CCH) ¶ 7569.09 (1970). In some respects, these standards would require more stringent requirements for television advertisements than the requirements in either the proposed rule or the final Rule.

[53] Comment 58 (PMA) at 2.

[54] For example, IISC submitted with its comment video tape samples of recent, non-pay-per-call service, sweepstakes promotions. During the public workshop conference, IISC stated its position that the disclosures in the advertisements submitted were clear and conspicuous. Tr. at 343, 347–48.

[55] 138 Cong. Rec. H538 (daily ed. Feb. 25, 1992) (H.R. 3490 was intended to give the FTC the authority to address type-size requirements for disclosures, as it has done in the past).

[56] Comments 14 (AAAA) at 4, 6; 37 (PPI) at 37–38; 39 (IISC) at 32; 43 (GMA) at 24; 45 (ANA) at 6; 52 (IIA) at 23; 60 (Pilgrim) at 10; 63 (NAIS) at 16.

[57] 15 U.S.C. 5712(a).

[58] *E.g., Phone Programs, Inc.*, D. 9247 (Dec. 10, 1992); *FTC* v. *M & H Assocs.*, No. HAR–92–2198 (D. Md. filed Aug. 7, 1992) (complaint and consent agreement); *FTC* v. *Starlink, Inc.*, No. 91–10–85 (E.D. Pa. filed Feb. 7, 1992) (complaint and stipulated final judgment and order for permanent injunction); *FTC* v. *Timmerman*, No. HAR–90–2007) (D. Md. filed Sept. 5, 1991) (complaint and consent order); *Audio Communications, Inc.*, No. C–3338 (July 24, 1991); *Teleline, Inc.*, No. C–3337 (July 24, 1991); *FTC* v. *Interactive Communications Technology, Inc.*, No. CV–F–91018 REC (E.D. Cal. filed Jan. 15, 1991) (complaint and consent order).

[59] Comment 42 (NAAG) at 6–10; Tr. at 303–04.

[60] Comments 21 (NCL) at 3–4; 40 (NACAA) at 1–2.

[61] Comment 59 (USPS) at 1.

grouped together in one section, numbered § 308.3(a). These requirements apply to each of the four sections requiring disclosures (now numbered § 308.3(b), cost of the call; § 308.3(c), sweepstakes; § 308.3(d), Federal programs; and § 308.3(f), parental permission for individuals under 18).

Section 308.3(a) of the final rule contains the "minimum standards" applicable §§ 308.3(b), (c), (d) and (f). Section 308.3(a)(1) requires disclosures to be in the same language as that principally used in the advertisement. No comment was received on this requirement, which was in the proposed rule and is consistent with the Commission's longstanding policy concerning clear disclosures in foreign language advertising.[62]

As originally proposed, print and video disclosures were required to be of a color or shade that readily contrasts with the background of the advertisement. Few commenters specifically addressed this provision. Several supported it,[63] while one commenter objected to it, without citing any specific reasons for the opposition.[64] The Commission believes that ready contrast between the disclosure and the background on which it appears is fundamental to readability.[65] The USPS commented that it has experience with enforcing similar requirements for certain disclosures.[66] The USPS noted that promoters acting in bad faith technically comply by using a contrasting color, but nevertheless the disclosure is still not noticeable, because it is a color such as bright yellow. The USPS suggested that the provision be modified to require that the contrasting background also maximize the visibility of the disclosure. The Commission believes that the USPS has raised a valid concern, but believes that the concern can be addressed by the provision, applicable to all disclosures, which prohibits the use of techniques likely to detract significantly from the communication of the disclosure (see discussion of § 308.3(a)(5) below). Thus, no change is made in the proposed regulations. The contrasting background requirement is now contained in § 308.3(a)(2) of the final Rule.

The proposed rule required disclosures in print advertisements to be parallel with the base of the advertisement. This provision was specifically supported,[67] while no specific opposition was stated. Again, this requirement is retained in the final Rule at § 308.3(a)(3).

The proposed rule required all audio disclosures in broadcast advertising to be delivered in a "slow and deliberate manner" and a "reasonably understandable volume," as those terms are defined in § 308.2(h) and (j). No commenters objected to the "reasonably understandable volume" requirement, but a few commenters objected to the "slow and deliberate manner" requirement.[68] The AAF opposed this requirement on the grounds that it might interrupt the style or flow of the broadcast. This term, however, is defined in the Rule as "a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement or the pay-per-call service." Accordingly, the Commission believes that the stated concern does not weigh in favor of changing the regulations; these requirements are now found in § 308.3(a)(4).

In addition, the proposed rule provided that with respect to each disclosure, nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be made in any advertisement, nor shall any audio or video technique be used that is likely to detract significantly from the communication of the disclosure. Although one commenter objected to this provision as being inappropriate,[69] the Commission believes that it is needed to prevent circumvention of the "clear and conspicuous" requirements, either through the conveyance of other information or through the manner in which the disclosures are made. Furthermore, based on the concern noted above by USPS about circumvention of the contrasting background requirement, the Commission is modifying the regulations to include print techniques among those that may not be used to detract significantly from the communication of the disclosure. This requirement is found in § 308.3(a)(5) of the final Rule.

As originally proposed, the rule did not specifically address program-length commercials (infomercials), as distinguished from traditional television or radio advertisements, in the sections concerning sweepstakes and games of chance or information concerning a Federal program. The Commission is concerned that if required information is presented only once in particularly long commercials, consumers who do not see the entire advertisement will miss the disclosures. Therefore, the final Rule, § 308.3(a)(6), requires that, unless otherwise specified, required disclosures will be made at least three times, near the beginning, middle and end of any program-length commercial. This requirement will apply to disclosures required by §§ 308.3(c), (d), and (f). The section pertaining to cost disclosures, § 308.3(b), however, requires a more stringent standard, consistent with the TDDRA. A video presentation of the cost disclosure must appear adjacent to each presentation of the pay-per-call number (in any length commercial), and in radio program-length commercials the cost must be given following each delivery of the number.

2. *Section 308.3(b): Cost of the Call*

Section 308.3(b)(1) of the final Rule describes the requirements for disclosing the costs of a call to pay-per-call service. They are the same requirements as those for disclosure of costs in the preamble of the pay-per-call service itself, and will be discussed in part II.D.1.b, *infra*, covering this preamble requirement. This section will only discuss the manner in which the disclosures must be made, *i.e.*, the "clear and conspicuous" standards for cost disclosures in advertisements.

The proposed rule[70] required video and print disclosures to be placed adjacent to each presentation of the pay-per-call telephone number. Few comments focused specifically on this requirement, though a number in general objected to any particular placement requirements.[71] Two commenters specifically supported this

[62] 16 CFR 14.9.

[63] Comments 5 (Fun Lines) at 1; 59 (USPS) at 2; 61 (ICN) at 3–4.

[64] Comment 37 (PPI) at 11.

[65] Similar requirements are found in other Commission rules and guides. *E.g.*, Guide Concerning Fuel Economy Advertising for New Automobiles, 16 CFR 259.2(b)(1)(i), n.3 (each visual "estimated mpg" disclosure must be broadcast against a solid color background that contrasts easily with the color used for the numbers); Smokeless Tobacco Regulations, 16 CFR 307.6, 307.7 (required warning must be in type contrasting with all other printed material on package or advertisement).

[66] Comment 59 (USPS) at 2, n.1 (regarding enforcement of 39 U.S.C. 3001(d)(2), which provides that a direct mail piece that takes the form of a bill, but is in fact a solicitation, must bear a disclosure, "on its face, in conspicuous and legible type in contrast by typography, layout or color with other printing on its face").

[67] Comment 5 (Fun Lines) at 1.

[68] Comments 19 (AAF) at 2; 45 (ANA) at 4–5.

[69] Comment 35 (AIP) at 6–7. AIP stated that it preferred reasonably specific, objective regulations, and opposed this section because of its subjective nature.

[70] In the proposed rule, this section was numbered 308.3(a)(1). 58 FR at 13385.

[71] Comments 19 (AAF) at 2–5; 37 (PPI) at 11; 39 (IISC) at 17–18; 52 (IIA) at 23–24; 63 (NAIS) at 15–16.

requirement.[72] Because a pay-per-call service provider is likely to ensure that the pay-per-call number is in a prominent position in the advertisement, requiring the cost to be adjacent to the number also ensures a prominent place for the cost, thus fulfilling Congress's objective of ensuring that consumers are informed of this important information when they see the advertisement.[73] One commenter objected to the provision on the grounds that it would prevent the use of column-style advertising.[74] The Commission, however, interprets "adjacent to" as meaning above, below, or next to (on either side). Accordingly, in a column-style advertisement, the cost could be above or below the telephone number, and comply with the Rule.

Some commenters raised an additional concern regarding the adjacency requirement; namely, the application of the proposed rule to advertisements in which more than one pay-per-call number is advertised, generally in list form, with only one price applicable to all of the telephone numbers. These commenters suggested that in such cases, the cost need only be displayed once, rather than adjacent to each of the telephone numbers.[75] The Commission agrees that in such circumstances, it would be unduly restrictive to require display of the cost of the call next to each pay-per-call number. Accordingly, the Rule is revised to state that where an advertisement displays more than one pay-per-call number with the same cost, the cost need only be placed adjacent to the largest presentation of the pay-per-call number. Otherwise, the final Rule retains the requirement that the cost be placed adjacent to each presentation of the pay-per-call number.

As originally proposed, in television and print advertisements, each letter and numeral of the video portion of the cost disclosure were to be at least as large as each letter and numeral of the pay-per-call number to which they were adjacent. The Commission sought comment on the appropriateness of this requirement, and whether a more appropriate measure existed for ensuring that the cost is disclosed "clearly and conspicuously."[76] Numerous commenters specifically opposed the "same size" requirement.[77] As noted previously, many commenters believed it is sufficient to require that all disclosures, including cost, be "clear and conspicuous," and therefore they opposed any specific requirement, whatever it might be. Others suggested alternatives, such as one-quarter the size of the pay-per-call number, but in at least 12-point type.[78] One commenter suggested that the cost could be one-half the size of the pay-per-call number and still be conspicuous.[79] Another suggested that the disclosures be in type no smaller than that used for the majority of text in the ad, or in the average type size used in the ad.[80] A number of commenters suggested that any minimum type size requirements be in the form of safe harbors.[81] Some commenters supported the same size requirement.[82]

After reviewing the comments, the Commission is persuaded that the cost need not necessarily be in the same type size as the pay-per-call number. A copy test of print advertisements for a 900-number sweepstakes submitted by IISC indicated that cost disclosures one-half the size of the pay-per-call number produced recall not significantly different than a cost disclosure the same size as the pay-per-call number.[83] This copy test provides some evidence that the cost could be smaller than the pay-per-call number and still produce significant recall.[84] In addition, some commenters suggested that having the cost the same size as the pay-per-call number would be visually distracting, would make the cost difficult to distinguish from the pay-per-call number, or would otherwise render the advertisement ineffective.[85]

Under the final Rule, the cost of the call must be at least one-half the type size[86] of the pay-per-call number.[87] The Commission recognizes, however, that there may be certain kinds of advertisements (such as classified advertisements or matchbook cover advertisements) in which a type size one-half the size of the pay-per-call number would result in an illegible disclosure. In such cases, it may be necessary for the cost to be larger than one-half the size of the number in order not to violate § 308.3(a)(5) of the general disclosure requirements. That section prohibits anything inconsistent with or in mitigation of the required disclosures, and any technique that is likely to detract significantly from the communication of the disclosures. The Commission would consider a very small cost disclosure to fall within those prohibitions and, thus, not comply with the requirement that all disclosures be "clear and conspicuous."

The proposed rule required that in television advertising, the cost must appear on the screen for the same duration as the video display of the pay-per-call number. A few commenters opposed this requirement,[88] but because it reflects a statutory mandate,[89] the final Rule retains the requirement.

The proposed rule required that disclosures in television advertisements always appear at least once simultaneously in both the audio and video portions of the advertisement, with one exception: Advertisements fifteen seconds or shorter would not require an audio disclosure if the pay-per-call number was not stated in the audio portion of the advertisement. The Commission sought comment on this proposed requirement and the proposed exception.[90] Several commenters

[72] Comments 59 (USPS) at 2; 61 (ICN) at 3–4.

[73] House Report at 4–5.

[74] Comment 19 (AAF) at 3.

[75] Comments 35 (AIP) at 6; 52 (IIA) at 21.

[76] 58 FR at 13380 (question 3).

[77] Comments 5 (Fun Lines) at 1; 19 (AAF) at 2; 22 (Meganews) at 3; 35 (AIP) at 4–5; 37 (PPI) at 7–9; 39 (IISC) at 16; 45 (ANA) at 4–5; 46 (Cox) at 3–4; 48 (DMA) at 3–5; 51 (USA Today) at 10–11; 52 (IIA) at 23–24; 61 (ICN) at 3; 63 (NAIS) at 12–15.

[78] Comment 5 (Fun Lines) at 1.

[79] Comment 35 (AIP) at 4.

[80] Comment 52 (IIA) at 24–25.

[81] Comments 33 (ITA) at 6; 37 (PPI) at 38; 39 (IISC) at 32; 43 (GMA) at 24; 45 (ANA) at 6; 52 (IIA) at 23; 60 (Pilgrim) at 10; 63 (NAIS) at 16.

[82] Comments 21 (NCL) at 1; 27 (NYDPS) at 1 (both generally supporting the proposed regulations); 40 (NACAA) at 4; 42 (NAAG) at 12 (generally supporting the proposed regulations); 59 (USPS) at 2.

[83] Comment 39 (IISC) at 31, Appendix A at 14.

[84] The study contained some methodological flaws, however. For example the study did not control additional factors—such as the format or organization of the 900-number information, and the type size of the rules of the game—that are likely to affect perceptions of the communications elements for which the study was designed (*e.g.*, the type size of the cost of the call). The advertisements were quite cluttered and were likely to have presented information overload problems with respect to the targeted information, *i.e.*, the 900 number, as evidenced by the fact that when asked what the main points of the advertisement were, only 28.5% of the respondents in the *industry* version of the advertisement mentioned the 900 number.

[85] Comments 19 (AAF) at 3; 22 (Meganews) at 2; 35 (AIP) at 5; 46 (Cox) at 3; 51 (USA Today) at 11.

[86] The Commission recognizes that the type set used for pay-per-call numbers and the cost disclosures will have both upper and lower case. When determining what type size to use for the cost disclosure, the upper case of the cost should be one-half the size of the upper case of the pay-per-call number. A similar measurement should be made for the lower case characters.

[87] In several 900-number cases, the Commission required parental permission video disclosures to be one-half the size of the pay-per-call number. *Fone Telecommunications, Inc.*, C–3432 (June 21, 1993); *Audio Communications, Inc.*, No. C–3338 (July 24, 1991); *Teleline, Inc.*, No. C–3337 (July 24, 1991). In addition, at least one state (Louisiana) requires that the cost be one-half the size of the largest pay-per-call number. La. Admin. Code tit. 51, Ch. 19–B, Sec. 1731 (1992).

[88] Comments 37 (PPI) at 11; 45 (ANA) at 4–5.

[89] 15 U.S.C. 5711(a)(1)(G).

[90] 58 FR at 13380–81 (questions 6 and 10).

supported this requirement.[91] Several others believed that simultaneous audio-video disclosures should not be required; they urged that advertisers be given the choice of using either audio or video for disclosures.[92] The Commission appreciates that allowing advertisers the choice of using the audio or video format for disclosures would provide more flexibility and allow for more creativity in the design of advertisements. However, the Commission believes that simultaneous audio-video disclosures are particularly appropriate for the cost disclosures, given the importance of this information to the consumer.[93] Accordingly, § 308.3(b)(2)(i) of the final Rule retains the audio-video disclosure requirement for the cost disclosure.

However, second exception to the simultaneous audio-video disclosure requirement has been added for advertisements that do not provide *any* audio information, including the pay-per-call number, about the pay-per-call service. No audio disclosures would be required for such advertisements. One commenter noted that mandatory audio disclosures would disallow the use of "scroll" ads commonly used on cable television.[94] These ads frequently scroll independently of the sound, which may be a rebroadcast radio transmission. In addition, some pay-per-call service advertisements occur in one portion of the television screen, while most of the screen is devoted to an unrelated program; the pay-per-call service advertisement has no audio component. For instance, a sports game could be ongoing on the screen, with the accompanying play-by-play in the audio portion, while the bottom of the screen might contain an advertisement for a pay-per-call service providing sports scores. The Commission believes that for these types of advertisements (*i.e.*, advertisements that either have no audio component or otherwise provide no information about the pay-per-call service in the audio component) it would be unduly restrictive to require audio disclosures. Accordingly, the final Rule is modified to provide an exception for such advertisements.

The proposed rule did not specifically address pay-per-call service advertisements in which the pay-per-call number is presented only in the audio portion of the advertisement, and not in the video portion. As proposed, the rule would have required video disclosure of the cost, even though the pay-per-call number would not have been made in the video portion. Because the proposed rule's requirements as to size and placement of the cost disclosure were tied to the video pay-per-call number, the proposed rule was ambiguous as to the size and placement requirements for the cost in such advertisements. Accordingly, the Commission has modified the proposed rule to require that in advertisements in which the pay-per-call number is presented only in the audio portion, the cost of the call is required only in the audio portion, immediately following the first and last delivery of the pay-per-call number. In program-length commercials (where the pay-per-call number is presented only in the audio portion), however, the cost must be disclosed immediately following each delivery of the pay-per-call number. In such program-length commercials, disclosure of the cost only after the first and last presentation of the pay-per-call number would be inadequate because of the likelihood that some consumers would tune in during the middle of the advertisement and miss the disclosure.

As proposed, the rule required that the cost be disclosed at least once in radio advertisements, immediately following the first presentation of the pay-per-call number, while in any program-length radio commercial, the cost must be disclosed each time the pay-per-call number is given. The Commission sought comment on whether it would be appropriate for the cost to be disclosed with each presentation of the pay-per-call number in all radio advertisements.[95] Few commenters focused on this question. NACAA and CA commented that the cost should be disclosed immediately after each time the pay-per-call number is given.[96] The AAF commented that repetition of the cost after the pay-per-call number would lengthen the advertisement, and thus increase the advertisement's cost.[97] According to the AAF, repetition of the pay-per-call number is required in order for listeners to retain the number, or to allow them to write it down, while such repetition is not required for the cost. The proposed rule, however, required repetition of the cost only in program-length radio commercials. Most radio commercials are short enough that consumers who hear the pay-per-call number are likely to hear the cost—even if it is only presented once. However, if the cost is only given once during a fifteen- to thirty-minute commercial, consumers might easily miss it. The Commission believes the rule as proposed is appropriate, and this section of the regulations has not been changed in the final rule.[98]

3. *Section 308.3(c): Sweepstakes; Games of Chance*

Section 308.3(c) addresses pay-per-call services that advertise sweepstakes, including games of chance. The proposed rule[99] incorporated the requirements of the TDDRA[100] that such advertisements clearly and conspicuously disclose the odds of winning a prize, award, service, or product at no cost or at reduced cost, or the factors that will determine the odds, if the odds are not calculable in advance. The proposed rule limited the application of the odds disclosure requirement to those situations where the prize, etc., is offered in connection with a sweepstakes or game of chance.

The Commission requested comment on whether other types of promotions,

---

[91] Comments 21 (NCL) at 1; 27 (NYDPS) at 1; 40 (NACAA) at 2; 42 (NAAG) at 12 (all generally supporting the proposed regulations); 53 (CME) at 18 (generally supporting the proposed regulations, but opposing the 15-second exception).

[92] Comments 19 (AAF) at 2; 34 (TPI) at 5; 37 (PPI) at 11; 39 (IISC) at 34–35; 45 (ANA) at 4; 48 (DMA) at 3; 49 (NIMA) at 3–4; 58 (PMA) at 2; 63 (NAIS) at 15 (if the pay-per-call number is not presented in the audio portion, the disclosures should not have to be presented in the audio portion either).

[93] Consumer communications research indicates that video-only presentation of information produces weaker recall than audio-only or audio-video presentation. *E.g.*, S. Ducoffe, *The Impact of Product Usage Warnings in Alcoholic Beverage Advertising*, 9 J. Pub. Pol'y & Mktg. 16, 26–27 (1990); D.D. Lovil, A.B. Padderud, *Video Disclosures in Television Advertising: Are They Effective?*, 31 J. of Communications 72–77 (1981); C.G. Penney, *Modality Effects in Short-Term Verbal Memory*, 82 Psychological Bull. 68–84 (1975). In the Ducoffe study, recall of alcohol warnings in beer commercials was tested, using different combinations of warnings and subjects. Among subjects for whom the product was relevant who were exposed to a high-severity warning, 63.3% in the audio condition, 74.1% in the audio-video condition, and only 14.3% in the video condition recalled the presence of a warning without aid. *Id.* at 24. In general, however, among all of the different combinations of warnings and subjects, audio-video warnings failed to produce greater recall than audio-only disclosures, suggesting the lack of impact of video disclosured. *Id.* at 27. Nevertheless, some studies have shown audio-video warnings to affect recall more than audio-only warnings. *E.g.*, Morris, Mazis & Brinberg, *Prescription Drug Information for Consumers: An Experiment of Source and Format*, in *Current Issues and Research in Advertising* (J. Leigh & C. Martin, Jr., eds. 1984).

[94] Comment 34 (TPI) at 5.

[95] 58 FR 13380 (question 3).

[96] Comments 31 (CA) at 4; 40 (NACAA) at 4.

[97] Comment 19 (AAF) at 2.

[98] Under the final Rule, television advertisements with audio-only presentation of the pay-per-call number must deliver the cost immediately following the first and last presentations of the pay-per-call number, while in (non-program-length) radio advertisements, it must be presented only once. The Commission believes that different standards for the different media are appropriate because in a radio advertisement, to receive any information, the consumer must be listening; in contrast, with television advertisements, the consumer's attention may be at least partially focused on the screen and not entirely on the audio.

[99] In the proposed rule, this section was numbered 308.3(b). 58 FR at 13385–86.

[100] 15 U.S.C. 5711(a)(1)(B).

such as lotteries or games of skill, should be subject to this provision, and whether the proposed rule was sufficiently clear as to the types of promotions subject to the rule.[101] Two commenters suggested that the provision apply to games of skill as well as games of chance.[102] One commenter opposed extending the requirement to games of skill because a true game of skill has no element of chance.[103] The Commission is persuaded that determining the odds even for games of skill having some element of chance would be problematic. The TDDRA, by requiring that the odds of winning be disclosed, was clearly directed at games where the winner is determined by chance. Accordingly, the final Rule applies only to sweepstakes and games of chance.

Several commenters noted that the proposed regulations could be read as requiring the odds disclosure in situations where it presumably was no intended, such as situations where no odds would be associated with receipt of the service or product.[104] For instance, if an information provider running a sweepstakes offered, as an incentive for entering the sweepstakes, a token to all those who entered, and this token was not in the prize to be awarded to the winner of the sweepstakes, then the proposed regulations could be read as requiring the odds disclosure for receipt of the token, even though the odds of receiving the token would be 1:1. Based on these comments, the Commission has decided to clarify the language of this section. Thus, the final Rule only requires the odds disclosure with respect to prizes "to be awarded to the winner" of the sweepstakes, rather than for prizes "in connection with the offering" of a sweepstakes.

The proposed rule required that the odds be disclosed in all advertisements, including television and radio advertisements. The Commission recognizes that at times it could be quite time- and space-consuming to disclose all the odds, particularly in games with multiple prizes and complex odds structures. In the NPR, the Commission posed questions regarding ways in which this burden might be lessened.[105] A number of commenters urged that no odds disclosures be required in broadcast advertisements, pointing to the Commission's Games of Chance Rule,[106] which, since 1983, has granted a temporary exemption to the odds disclosure requirement for broadcast advertisements.[107] The Commission, however, is constrained by the language of the TDDRA, which requires that the odds of winning be disclosed in advertisements, without an exception for television or radio advertisements. The Commission received no feasible suggestions in the comments on how to lessen the burden of odds disclosures in broadcasting advertising. Commission staff also specifically raised this issue in the public workshop conference, and once again the participants did not offer any feasible suggestions.[108] Accordingly, this requirement is retained unchanged in the final Rule.

Some commenters expressed confusion over the proposed rule's requirement that if the odds of winning are not determinable in advance, the factors used in determining the odds must be disclosed. Two commenters indicated concern that this information could not be disclosed if the odds of winning depended upon the number of entries received.[109] It is the Commission's position that when the odds depend upon the number of entries received, a statement to that effect satisfies the requirement to disclose the factors used in determining the odds.

As proposed, the rule required a disclosure that no purchase (*i.e.*, no call to the pay-per-call service) is required to participate, along with a disclosure of a free alternative method of entry and instructions on how to enter.[110] The Commission requested comment on the preferability of allowing the free method of entry information to be disclosed in the preamble rather than in the advertisement.[111]

Several commenters opposed the proposed advertising disclosure requirements,[112] while several others supported them.[113] Some commenters opposing the requirements referred to the burden of having to make lengthy disclosures, particularly in broadcast media. The commenters favoring the requirements expressed the opinion that pay-per-call number sweepstakes are unlike traditional sweepstakes in which the consumer is presented with the alternative of entering the sweepstakes either by purchasing a particular product or, for example, by sending in a postcard, because in the case of a pay-per-call number sweepstakes, there is no separate product to be purchased. Rather, the purchase is accomplished through calling the pay-per-call number.

The Commission believes this last concern is valid. Although consumers may generally be aware of the "no purchase required" disclaimer typically found in sweepstakes advertisements, they may not appreciate that, in the case of an advertisement for a pay-per-call number, the "purchase" is calling the pay-per-call number. In this regard, it is significant that a 1992 Harris consumer survey showed that 35% of adult Americans were unaware of the difference between 900 numbers and 800 (toll-free) numbers,[114] while another 1992 survey indicated that 50% of adult Americans did not expect to be charged for 900 number calls.[115] In other words, between one-third and one-half of adult Americans may not realize that 900 numbers cost money. It is reasonable to expect, therefore, that at least one-third of adults would not equate calling a pay-per-call service with making a purchase and would believe that they could enter the contest without cost.

The Commission thus believes that to prevent consumer deception, sweepstakes offered through pay-per-call numbers should disclose, either in advertising or in the preamble to the call, that no call to the pay-per-call service is necessary to enter the sweepstakes. The USPS stated in its comment that some promoters have used confusing phrases in print advertising to describe the free entry option, such as "manual handling."[116] At the public workshop conference, some commenters stated that saying "no purchase necessary" is confusing to consumers, and the IISC indicated it did not object to alternative language, such as "no telephone call necessary."[117] The Commission believes it should be made completely clear to consumers that they do not have to incur a charge in order to enter a sweepstakes. Accordingly, the final Rule is modified slightly to make clear that the disclosure should state that no call to the pay-per-

[101] 58 FR at 13380 (question 7).

[102] Comments 31 (CA) at 5; 59 (USPS) at 3–4.

[103] Comment 37 (PPI) at 31.

[104] Comments 37 (PPI) at 27; 52 (IIA) at 22; 63 (nais) at 16–17.

[105] 58 FR at 13381 (question 9).

[106] 16 CFR part 419.

[107] 48 FR at 1046 (1983).

[108] Tr. at 440–461.

[109] Comments 37 (PPI) at 10; (IIA) at 22.

[110] Offering a free method of entering a sweepstakes or game of chance is necessary to avoid violation of the Federal law prohibiting commercial lotteries, 18 U.S.C. 1301, *et seq.*

[111] 58 FR at 13380–81 (question 8).

[112] Comments 39 (IISC) at 10; 45 (ANA) at 5; (IIA) at 22–23; 58 (PMA) at 1; 63 (NAIS) at 21–23.

[113] Comments at 21 (NCL) at 13; 31 (CA) at 6; 37 (PPI) at 10; 40 (NACAA) at 6; 42 (NAAG), Appendix 1 at 2–3; 59 (USPS) at 5.

[114] Comment 21 (NCL) at 10.

[115] Comment 42 (NAAG), Appendix 2 at 1–2.

[116] Comment 59 (USPS) at 5.

[117] Tr. at 424–426.

call number (rather than no purchase) is necessary to enter the sweepstakes.[118]

Disclosing that no call to the pay-per-call number is necessary to enter the sweepstakes, however, is insufficient without also telling consumers how to enter the sweepstakes without calling the pay-per-call number. As originally proposed, the rule required advertisements to disclose an alternative means of entry and instructions on how to enter. As noted above, a number of commenters argued that it was too burdensome to make these disclosures in broadcast advertisements, particularly in the size required by the proposed rule. After reviewing the comments and considering the discussion of this issue at the public workshop conference,[119] the Commission believes that the proposed rule should be modified to require disclosure of the existence of an alternative method of entry and a cost-free means of learning of that method: Either a local or toll-free telephone number that consumers may call to learn of the information, or an address that consumers may write to for instructions on how to enter.[120] The actual instructions on how to enter without cost need not be disclosed so long as consumers are adequately informed how to obtain that information.

At least one commenter disliked the alternative of allowing disclosure of the free method of entry information in the preamble, citing the relative costliness of making disclosures in the preamble compared to making them in advertisements.[121] Other commenters raised the concern that if consumers are forced to call the pay-per-call number in order to learn of the free method of entry, the tendency may be for them simply to stay on the line and enter through the pay-per-call service.[122]

The Commission has decided to allow pay-per-call providers to place the free method of entry information *either* in the advertisement or in the preamble. If provided in the preamble, the information must be presented at a reasonably understandable volume and in a slow and deliberate manner, as those terms are defined in § 308.2(h) and (j).

The proposed rule required that the advertisement disclose the scheduled termination date of the game of chance. In addition, the Commission had requested comment on the desirability of requiring disclosure of other limitations on the sweepstakes program's availability, such as geographical restrictions, time-of-day availability, or touch-tone phone requirements; the name, city, state, and customer service telephone number of the promoter or provider of the pay-per-call service; and the value of the prize.[123] Several commenters noted that sweepstakes are already subject to a plethora of Federal and State regulations,[124] and objected to the requirement to disclose the game's termination date or the other information not required by the TDDRA.[125] The Commission is persuaded that sweepstakes promotions run through pay-per-call services are not sufficiently different from other sweepstakes promotions with respect to these types of disclosures that it is necessary for this Rule to address these issues, either to prevent unfair or deceptive practices, or to prevent evasion of the regulations. Accordingly, the final Rule does not contain the requirement to disclosure the game's termination date, or any of the additional disclosure requirements listed above.

A number of commenters, however, noted that pay-per-call service sweepstakes are frequently used to promote prizes that are represented to be far more valuable than is actually the case.[126] The legislative history indicates that Congress was also concerned about the problem.[127] The Commission requested comment on the advisability of requiring disclosure of the material terms and conditions of receiving a service or product through a pay-per-call service.[128] One of the material terms suggested was a clear and accurate description of the service or product. While the Commission has decided not to include this requirement for all pay-per-call service advertisements (relying instead on general compliance with section 5 of the FTC Act), in the case of pay-per-call service sweepstakes, the Commission is persuaded that sufficient evidence exists, as presented in the comments, that explicitly requiring a clear and accurate description of sweepstakes prizes is required in order to prevent deceptive practices.[129] Thus, the final Rule requires that in advertisements for pay-per-call service sweepstakes, any characterization of the prizes or awards must be truthful and accurate. The Rule does not impose an affirmative duty to describe the prizes; it simply requires that to the extent that the advertisement identifies, describes, or otherwise characterizes the prizes, such characterization must be truthful and accurate.

With respect to the manner in which the required disclosures must be made, the proposed rule stated that in television advertisements, there must be a simultaneous audio-video disclosure and that each line of the video disclosure must occupy at least one-tenth of the vertical field of the television screen. Several commenters objected to these specific requirements.[130] After reviewing the comments, the Commission believes that the Rule's purpose would better be served by allowing more flexibility in the size and presentation of the sweepstakes disclosures. Because the regulations require several disclosures, there is a concern that the advertisement would become overly cluttered with information, with the result that the important information would not appear prominently in the advertisement.[131] In addition, variability in disclosure size among advertisements may be desirable because it is likely to lessen the potential for the disclosures to "wear-out," thus enhancing their noticeability.[132] The proposed rule is

[118] This disclosure requirement does not prescribe a specific phrase that must be used. The Commission, however, interprets the Rule as requiring a specific statement that no call to a pay-per-call telephone number, or to a telephone call costing money, is required. It is the Commission's opinion that stating that "no purchase is necessary to enter" would not comply with the Rule.

[119] Tr. at 412–22.

[120] Providers of pay-per-call services that choose to provide a local or toll-free telephone number have the responsibility of ensuring that the telephone numbers are adequately staffed or otherwise adequately maintained so that the free method of entry information is readily accessible to consumers who call those telephone numbers.

[121] Comment 37 (PPI) at 32.

[122] Comments 31 (CA) at 2; 40 (NACAA) at 6; 42 (NAAG) at 14.

[123] 58 FR at 13380 (question 7).

[124] *See, e.g.*, Comment 58 (PMA) at 1 and Appendix (listing federal and state laws and regulations governing contests and promotions). *E.g.*, Minn. Stat. Sec. 609.75 (labels and advertisements must clearly state the scheduled termination date of the promotion).

[125] Comments 37 (PPI) at 9–11, 31; 39 (IISC)—at 10–11; 45 (ANA) at 6; 58 (PMA) at 1.

[126] Comments 21 (NCL) at 13–14; 31 (CA) at 6; (NACAA) at 5; 42 (NAAG) at 13–14; 59 (USPS) at 4, 7.

[127] House Report at 5.

[128] 58 FR at 13382 (question 16).

[129] Comments 21 (NCL) at 13–14; 31 (CA) at 6; 40 (NACAA) at 5; 42 (NAAG) at 13–14; 59 (USPS) at 4, 7.

[130] Comments 14 (AAAA) at 4–6; 22 (Meganews) at 3; 37 (PPI) at 11; 39 (IISC) at 16, 29; 45 (ANA) at 5, 7; 52 (IIA) at 22; 58 (PMA) at 2; 63 (NAIS) at 22.

[131] Comments 19 (AAF) at 4; 35 (AIP) at 5; 37 (PPI) at 10; 39 (IISC) at 37–38; 45 (ANA) at 6; 46 (Cox) at 3; 48 (DMA) at 4; 49 (NIMA) at 3–5; 61 (ICN) at 4–5.

[132] *See* Bhalla & Lastovicka, *The Impact of Changing Cigarette Warning Message Content and Format*, in *Advances in Consumer Research* 305, 309 (T. Kinnear ed. 1984) (varying the content and format of messages enhances noticeability and attention); R. Petty & J. Cacioppo, *Communication and Persuasion: Control and Peripheral Routes of*

Continued

modified to allow the required disclosures to be presented either in audio or video form. Where video disclosures are used, they must appear on the screen in sufficient size and for sufficient time to allow consumers to read and comprehend them. If audio disclosures are used, they must, of course, be given in a slow and deliberate manner and at a reasonably understandable volume.

In print advertisements, the proposed rule required that the disclosures be in at least 12-point type. A number of objections were raised to this requirement,[133] with several commenters responding to the Commission's question whether this requirement would be feasible for different types of advertising media.[134] Some commenters pointed out that classified ads generally only use 6-point type, and do not necessarily allow variation in size or typeface, so that the rule would prevent the use of that medium for some advertisements.[135] As the Commission suggested in the NPR, and as several commenters noted, in the case of billboards, a 12-point disclosure would be inappropriate.[136] In addition, some extrinsic evidence was submitted indicating that consumer recall of odds disclosures made in 12-point type was no better than when made in 10-point type.[137] The Commission has decided that the purposes of the Rule would best be served by a more flexible standard. Therefore, the final Rule requires that the disclosures be made in a sufficient size and prominence, and in such location in the advertisement, that the information is noticeable, readable, and comprehensible. This flexibility enables variation in the size of disclosures, relative to the type and size of the advertisement, so long as the information is always readable and of sufficient prominence to be readily noticed. Moreover, this flexible standard addresses the concerns raised by the copy test evidence[138] that a 12-point requirement was too rigid to allow effective presentation of both the selling message and the required disclosures.

Attitude Change 68–73 (1986) (once consumers become accustomed to an advertising message, repetition of the same message results in decreased effectiveness).

[133] Comments 14 (AAAA) at 5; 22 (Meganews) at 3; 37 (PPI) at 11, 28–29, 37; 39 (IISC) at 16–24, 29–32; 45 (ANA) at 5; 58 (PMA) at 2.

[134] 58 FR at 13381 (question 10).

[135] Comments 22 (Meganews) at 3; 46 (Cox) at 5; 48 (DMA) at 4; 52 (IIA) at 24; 63 (NAIS) at 20–23; 73 (NII) at 5; 80 (Suarez) at 2.

[136] Comments 14 (AAAA) at 15; 37 (PPI) at 34; 48 (DMA) at 4.

[137] Comment 39 (IISC) at 37.

[138] See comment 39 (IISC), Appendix B.

4. *Section 308.3(d): Federal Programs*

Section 308.3(d) covers advertisements for pay-per-call services that provide information on Federal programs, but that are not sponsored or endorsed by any Federal agency.[139] The proposed rule[140] required that the advertisement clearly and conspicuously disclose, at the beginning, that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency. While few comments focused on this provision, those that did stated that the Rule ought to provide better definition of services that "provide information on a Federal program." The IIA, for instance, suggested that the provision be narrowed to cover only those services that contain "a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal government connection, approval, or endorsement."[141] This language is found in a U.S. Postal Service statute prohibiting sending through the mail certain materials that contain the above information, without a disclosure regarding lack of Federal government approval or endorsement.[142]

IIA commented that the provision should not cover programs that merely provide information originating with or obtained from the Federal government.[143] Similarly, NAIS commented that the disclosure should only be required on programs exclusively or predominantly dedicated to the provision of Federal program information, or that otherwise give the appearance of Federal sponsorship or authority.[144] After reviewing the comments, the Commission is persuaded that further clarification is warranted.

The Commission agrees that programs giving the appearance of Federal sponsorship or endorsement should contain the disclosure. While the legislative history of the TDDRA does not shed any light on congressional intent with respect to this provision, the Commission believes that the statute is reasonably interpreted as intending to require the disclosure in those situations in which consumers may be misled about the program's affiliation with the Federal government. The Commission is not persuaded, however, that such misinterpretation would be limited to those programs that predominantly or exclusively are dedicated to providing information on a Federal program.[145] The final Rule, therefore, is modified to make clear that pay-per-call services that provide information on a Federal program include services that give the appearance of Federal affiliation. The Rule states that such services include those using a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement.

The TDDRA requires the Federal programs disclosure to be made at the beginning of the advertisement.[146] Accordingly, the proposed rule required that in both television and radio advertisements, the disclosure must begin within the first fifteen seconds of the advertisement, while in print advertisements, the disclosure must appear within the top one-third of the advertisement. Two commenters objected to this requirement, but it appears that they were unaware of the statutory requirement that the disclosure be made in the beginning of the advertisement, and thus they did not offer any alternative way of fulfilling the statutory requirement.[147] Thus, no modification will be made in the final Rule.

The final issue with respect to the Federal programs disclosure concerns the size and manner of the disclosure. As proposed, the rule required a simultaneous audio-video disclosure in television advertisements, and specified that each line of the video disclosure must occupy at least one-tenth of the vertical field of the television screen. For the reasons stated above in the sweepstakes section, the Commission has decided to modify the proposed rule to allow the disclosure to be made in either the audio or video portion of the advertisement. If a video disclosure is used, it must appear on the screen in sufficient size and for sufficient time to

[139] An example would be a service providing access to information in the Federal Register or the Congressional Record.

[140] In the proposed rule, this section was numbered 308.3(c). 58 FR at 13386.

[141] Comment 52 (IIA) at 7.

[142] 39 U.S.C. 3001(h), (i).

[143] Comment 52 (IIA) at 6.

[144] Comment 63 (NAIS) at 24.

[145] At the same time, the Commission does not contemplate that the disclosure would be required in programs that make only incidental use of, or incidental reference to, information obtained from the Federal government. For example, a winery could run a promotional campaign highlighting the wine region's attraction as a tourist destination, and give the population of the region, by referring to the most recent U.S. Census. The Commission does not interpret the regulations as applying to such a pay-per-call service, merely because it referred to U.S. Census Bureau data.

[146] 15 U.S.C. 5711(a)(1)(C).

[147] Comments 37 (PPI) at 12; 63 (NAIS) at 25.

allow consumers to read and comprehend the disclosure. An audio disclosure must be delivered in accordance with the requirements of § 308.3(a)(4).

Similarly, the proposed rule required that the disclosure in print advertisements be in at least 12-point type. Again, for the reasons stated in the sweepstakes section, the Commission has decided to modify the proposed rule to require that print disclosures be made in a sufficient size and prominence, and in such location in the advertisement, that the information is noticeable, readable, and comprehensible.

5. *Section 308.3(e): Prohibition on Advertising to Children*

As required by the TDDRA,[148] section 308.3(e) of the Rule prohibits a provider of pay-per-call services from directing advertisements for such services at children under the age of 12, unless the service is a bona fide educational service (as defined in § 308.2(a)).[149] In the proposed rule,[150] advertisements directed to children under 12 were defined, both by the type of medium in which they appear as well as by the nature and content of the advertisement, in the form of a rebuttable presumption. Advertisements directed to children under 12 were presumed to include the following: Advertisements appearing in publications directed to children (*e.g.*, children's books, magazines and comic books); advertisements appearing during or immediately adjacent to television programs directed to children (*e.g.*, children's programming as defined by the FCC,[151] animated programs, and after-school specials directed to children); advertisements broadcast during or immediately adjacent to radio programs directed to children; advertisements appearing on a commercially prepared video directed to children; and advertisements or promotions appearing on product packaging directed to children.

In addition, in the proposed rule, any advertisement, regardless of placement, that is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like, would also be presumed directed to children under the age of 12. However, the proposed rule provided that this presumption could be rebutted with competent and reliable evidence demonstrating that the receiving audience was composed predominantly of individuals aged 12 or older. The final Rule retains the use of content-based criteria, but only as a factor for the Commission to consider in determining whether an advertisement is directed to children under 12.

The Commission specifically sought comment on several discrete issues regarding this provision of the proposed rule: (1) Whether structuring the definition of advertising to children under 12 in the form of a rebuttable presumption is appropriate and useful; (2) whether the use of audience composition and readership data to demonstrate whether a particular advertisement is directed to that age group is appropriate and useful; and (3) the appropriate criteria for the Commission to rely upon in determining whether an advertisement is directed to children under 12.[152] Included with these questions was a specific request by the Commission for any data that would assist the Commission in setting a specific percentage of audience composition that would reflect accurately a "children's audience."[153] The NPR also asked, among other things, whether the definition provided sufficient guidance as to the type of advertisement that would be presumed directed to children, and whether it was appropriate for the Commission to rely, at least in part, on the content of an advertisement as a factor.[154] This section discusses each of these issues.

The comments were divided regarding whether the definition of advertisements directed to children under 12 should take the form of a rebuttable presumption. Some of the commenters urged the Commission to maintain this format because they believed that the proposed definition properly placed on the advertiser the burden of proving the composition of the receiving audience.[155] In addition, several commenters stated that a standard based on audience composition data provides objective, measurable proof, using data that advertisers already use and analyze in determining where to place advertisements.[156] In particular, PPI favored using audience composition data as the basis for the definition, and stated that it should be given a more prominent role than merely as evidence to rebut the presumption.[157] Most of the commenters that favored the rebuttable presumption also favored reliance on audience composition data to rebut the presumption. However, nearly all of those commenters also urged the Commission to make it more difficult to rebut the presumption by requiring a higher percentage of audience members

[148] 15 U.S.C. 5711(a)(1)(D).

[149] A number of commenters raised First Amendment issues with respect to the congressional ban on all pay-per-call advertising and services directed to children under 12. Comments 14 (AAAA) at 2–4, 7–9; 30 (CARU) at 2; 39 (IISC) at 6–8, 11–13; 45 (ANA) at 1–3, 8–9; 48 (DMA) at 7–8, 10; 63 (NAIS) at 7–8, 25. Several of these commenters also challenged the constitutionality of the advertising restrictions generally. Under the First Amendment, commercial speech that is misleading or fraudulent may be prohibited altogether, and even commercial speech that is neither misleading nor fraudulent may be restricted, provided the government's interest in doing so is substantial, the restrictions directly advance the government's asserted interest, and the restrictions are no more extensive than necessary to serve that interest. *See Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of New York*, 447 U.S. 557, 566 (1980) (cited in Senate Report at 4–5); *see also Board of Trustees of the State Univ. of New York* v. *Fox*, 492 U.S. 469, 475 (1989); *City of Cincinnati* v. *Discovery Network, Inc.*, 113 S.Ct. 1505, 1510 (1993).

The test is not whether the regulation, as applied, represents the "least restrictive means" available, but merely whether it has been "narrowly tailored" to serve the government's asserted interest without ensnaring protected, non-commercial speech. *Fox*, 492 U.S. at 480; *see, e.g., FTC* v. *Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 43–44 (D.C. Cir. 1985) (injunction did not impose a sweeping or blanket prohibition and was not broader than reasonably necessary to prevent deception). The fit between the government's goals and the means chosen to meet those goals need not be "perfect," but simply "reasonable." *Fox*, 492 U.S. at 480. The legislative history of the TDDRA notes, for example, that programming aimed at children may be subject to reasonable restrictions, where such restrictions serve a substantial interest and are otherwise consistent with First Amendment requirements. *See* Senate Report at 4–5 (*citing FCC* v. *Pacifica Foundation*, 438 U.S. 726, 749 (1978) (quoting *Ginsberg* v. *New York*, 390 U.S. 629 (1968)).

As explained throughout this statement of basis and purpose, the Commission has considered and evaluated various regulatory alternatives in determining the final scope and extent of its regulations. The Commission believes that the requirements set forth in the final Rule are reasonable, are narrowly tailored to meet the required regulatory and law enforcement objectives, and are no more extensive than necessary to serve the purposes articulated by Congress in the statute and the legislative history.

[150] 58 FR at 13386.

[151] The FCC defines "children's programming" as "programs originally produced and broadcast for an audience of children 12 years old and under." FCC, Report and Order, Policy and Rules Concerning Children's Television Programming, Docket No. 90–570 (April 9, 1991). Thus, the FCC definition relates to children *12 years old and under*, while this rule prohibits pay-per-call services and advertisements for such services directed to children *under the age of 12*. Nevertheless, the FCC's definition provides a useful benchmark.

[152] 58 FR at 13381 (question 11).

[153] *Id.* at 13381 (question 13.b).

[154] *Id.* at 13381–82 (question 14).

[155] Comments 21 (NCL) at 4, 16–17; 31 (CA) at 7; 37 (PPI) at 35; 40 (NACAA) at 6; 42 (NAAG) at 15; 53 (CME) at 14–15.

[156] Comments 37 (PPI) at 35–36; 53 (CME) at 15. On the same issue, CA stated that pay-per-call providers should not be permitted to rebut the presumption with evidence other than audience composition data due to the inherent subjectivity of such information. Comment 31 (CA) at 7.

[157] Comment 37 (PPI) at 12–13.

12 and older than suggested in the NPR.[158]

On the other hand, a significant number of commenters were opposed to a rebuttable presumption format. These commenters generally took the position that while the factors identified in the proposed rule might be appropriate if considered together, none of them were sufficient alone, and none were sufficient to rise to the level of presumptive evidence.[159] Moreover, several of these commenters stated that any presumption contained in the Rule should run in favor of the pay-per-call providers and against the Commission—*i.e.*, that all advertisements for pay-per-call services should be presumed directed to children aged 12 and older, unless the Commission is able to prove otherwise.[160] A majority of the commenters opposing the rebuttable presumption also took the position that the percentages identified by the Commission in the NPR were inappropriate because they made it too difficult to rebut the presumption.[161] However, only PPI responded to the Commission's request for relevant data, by providing a one-page list showing the audience composition for several different types of television programs, and circulation data for several magazines.[162]

With respect to the criteria detailed in the proposed rule that would raise the presumption that an advertisement is directed to children under 12, there was general agreement by the commenters that the factors identified by the Commission were appropriate, provided that the presence of one factor would not raise the presumption by itself.[163] The public workshop conference was particularly enlightening regarding this issue, and it is clear that the weight of the comments indicates that the criteria developed by the Commission are thought to be comprehensive and reasonable indicia of whether a particular advertisement is directed to children under the age of 12. However, many of the participants also indicated that it would be necessary for the Commission to review an advertisement in light of all of the factors in making its determination.[164] Many of the commenters that favored the use of the delineated criteria, when taken as a whole, also opposed the use of any one factor to raise the presumption that an advertisement is directed at young children.[165]

Several of the commenters noted that the use of media-based criteria, *i.e.*, placement of the advertisements in particular types of media, was appropriate because that is the manner in which most advertisers place their advertisements.[166] CME also urged the Commission to retain the content-based portion of the criteria in the final Rule, emphasizing that there was legislative history to support this aspect of the definition.[167]

In contrast, a few of the commenters were completely opposed to the presumption criteria as set forth in the proposed rule. Several commenters expressed concern over the ambiguity of these criteria or the fact that they were not narrowly tailored, while others indicated a preference for no criteria at all, or simply disagreed with the criteria listed in the proposed rule.[168] Some of those commenters who opposed any criteria felt that the Rule should merely restate the TDDRA's ban on all advertisements directed to children under 12. For the reasons stated in part II.B., *supra*, regarding clear and conspicuous disclosures, the Commission believes this suggestion would violate the congressional mandate that the Commission enact implementing regulations, and that it would produce an unenforceable Rule.

Two commenters objected to considering advertisements placed immediately adjacent to children's television programs as advertisements directed to children under 12 because doing so would prohibit pay-per-call providers from placing advertising as "run-of-station" spots—*i.e.*, allowing the particular television station to place the advertisements at any available time, rather then specifying a particular placement.[169] According to one commenter, it is more expensive for advertisers to specify during which television program they want their advertising placed, rather than placing a "run-of-station" advertisement.[170]

After reviewing the comments and the transcript of the public workshop conference, the Commission has decided to modify the form of the prohibition on advertisements directed to children under 12. The Commission is persuaded that a one-factor rebuttable presumption is unworkable. As drafted, the proposed rule would permit only audience composition data to rebut the presumption. While audience composition data is available for a wide variety of broadcast programming through established services such as Nielsen Television Viewing Profiles, and for magazines through reader profiles, there are currently few data sources for cable channels, nor is their readily available data for other types of advertising formats, such as product packaging. Since no factor alone could have raised the presumption, such a rule could subject many pay-per-call advertisements to a one-factor test without a real opportunity for the advertiser to rebut the presumption. Absent a meaningful source of audience composition data, this approach would be inconsistent with the Commission's approach to reviewing advertising claims; *i.e.*, the Commission generally examines the totality of the circumstances, including the advertisement is placed and the nature of the advertisement itself. Thus, after reviewing the comments, the Commission believes that audience composition data may not be a realistic rebuttal factor, but that it is of use, when available, as an indicator of when an advertisement is directed to children under 12.

The final Rule has two distinct tests for determining whether an advertisement is directed to children under 12. The first test is found in

[158] Comments 31 (CA) at 7; 40 (NACAA) at 6; 42 (NAAG) at 15; 53 (CME) at 16–17.

[159] Comments 19 (AAF) at 5; 43 (GMA) at 7–8, 13, 15–16; 41 (Kellogg) at 3–5; 45 (ANA) at 9–10; 48 (DMA) at 8–10; 63 (NAIS) at 25–26.

[160] Comments 14 (AAAA) at 8; 19 (AAF) at 5; 45 (ANA) at 9; 48 (DMA) at 10; 52 (IIA) at 27.

[161] Comments 19 (AAF) at 5–6; 43 (GMA) at 17–18; 45 (ANA) at 10.

[162] Comment 37 (PPI), unnumbered attachment.

[163] Comments 19 (AAF) at 5; 35 (AIP) at 8; 43 (GMA) at 8, 15; 45 (ANA) at 9; 52 (IIA) at 25; 53 (CME) at 10–14; 63 (NAIS) at 26. CA supported a medium-based definition, but did not comment specifically on the criteria. Comment 31 (CA) at 7. NCL supported this provision of the rule as proposed. Comment 21 (NCL) at 16–17.

[164] Tr. at 360–85. Additionally, several participants at the public workshop conference stated that audience composition data should be considered as one of the criteria to examine in determining whether an advertisement is directed to a particular age group. Tr. at 373–75, 384.

[165] Comments 19 (AAF) at 5; 43 (GMA) at 15–16; 52 (IIA) at 27; 63 (NAIS) at 26–27; Tr. at 371.

[166] Comments 52 (IIA) at 26; 53 (CME) at 12; Tr. at 381–82.

[167] Comment 53 (CME) at 13 (citing House Report at 14). Clearly the House Committee contemplated that the Commission could use both a media-based and a content-based definition. *See also* Comments 31 (CA) at 7; 52 (IIA) at 26–27.

[168] Comments 20 (ABC) at 1–2; 30 (CARU) at 2–3; 35 (AIP) at 8 (favored all media-based criteria, but opposed content-based criteria as unnecessarily vague); 37 (PPI) at 12, 35; 45 (ANA) at 10 (believed criteria to be relevant factors but opposed the rebuttable presumption and would not support using criteria as part of that presumption); 48 (DMA) at 8. Some commenters identified, in their written comments, particular criteria they believed to be vague, ambiguous, or overly broad. Comments 14 (AAAA) at 10; 43 (GMA) at 12–15; 45 (ANA) at 8; 63 (NAIS) at 27. At the public workshop conference, however, some of these same parties indicated agreement with the criteria if they are examined together, and no single factor is determinative.

[169] Comments 34 (TPI) at 6; 63 (NAIS) at 27; Tr. at 387.

[170] Comments 34 (TPI) at 6; Tr. at 387–88.

§ 308.3(e)(2), which addresses the case where audience composition data or readership data is available and demonstrates that a majority (more than 50%) of the viewing audience of the program or readership [171] of the periodical is composed of children under 12. This first test defines any pay-for-call advertisement in those media placements as an advertisement directed to children under 12 and, therefore, completely prohibits such advertisements. Such a finding will be based solely on preexisting competent and reliable audience composition or readership data. This section does not create a new evidentiary burden on a pay-per-call provider to create a database where one does not already exist.

The Commission set the threshold for a "children's audience," *i.e.*, when children under 12 comprise over 50% of the viewers, based on its review of the comments and on its experience and expertise in regulating advertising.[172] An audience composed of over 50% young children can reasonably be characterized as a "children's audience." [173] The Nielsen data provided by PPI demonstrate that very few television programs or periodicals would fall into this category. According to that data, Saturday and Sunday morning cartoons, such as "Beetlejuice," would have an audience composed of more than 50% children under 12. Prime time programs with a juvenile appeal, like "Growing Pains," have approximately 40% of their audience in that age group. With respect to periodicals, the data provided indicate that publications such as "Game Players Guide to Nintendo" have an under-12 readership of 30%.[174] Thus, based on the record, the 50% cutoff would not sweep too broadly, as there are very few television programs or periodicals that would fall into the prohibited category.[175]

The second test for determining whether an advertisement is directed to children under 12 is contained in §§ 308.3(e)(3)(i)-(vii). Under this test, if competent and reliable audience composition data or readership data do not demonstrate that more than 50 percent of the audience or readership is composed of children under 12, the Commission will consider where the advertisement is placed and its nature and content in determining whether an advertisement is directed to children under 12.[176] Sections 308.3(e)(3)(i)-(vi) set forth the media placements the Commission will consider. As discussed below, these sections have been modified slightly compared to the corresponding sections of the proposed rule.[177] On the other hand, § 308.3(e)(3)(vii) of the final Rule, which remains essentially the same as proposed, states that the Commission will consider the content of the advertisement itself, regardless of where it is placed, in determining whether a particular advertisement is directed to children under the age of 12.

While the criteria contained in the second test are virtually the same as those set forth in the proposed rule, the use of the criteria is entirely different. Under the proposed rule, the existence of any one of the criteria could raise the presumption that a particular advertisement was directed to children under 12. In contrast, under the final Rule, if competent and reliable audience composition or readership data demonstrates that 50 percent or less of the audience is composed of children under 12, or if such data does not exist, the Commission will consider the placement of the advertisement as well as the nature and content of the advertisement itself in making its determination.

The Commission is persuaded by the comments that it would be unreasonable to find that an advertisement violated the statutory prohibition on advertising to children based on the existence of only one factor where it is not evident that a majority of the audience is under 12. Consistent with the Commission's approach to advertising cases generally, in these cases the Commission will examine the totality of circumstances in making its determination. However, the Commission will not assign any particular weight to any of the delineated criteria, nor will it state, in the abstract, the number of factors that it will require to be present in order to find a violation.[178] Under this section, audience composition data will not play a role in the Commission's analysis except to place an advertisement in a category of review where the Commission will consider both the placement and content of the advertisement. After reviewing the comments, the Commission is persuaded that this is a fair and reasoned approach.

The criteria identified in the final Rule are identical, for the most part, to the criteria set forth in the proposed rule which raised the presumption that an advertisement was directed to children under 12.[179] Based on overwhelming approval by the commenters and the conference participants of the criteria outlined in the proposed rule, the Commission decided to incorporate them into the final Rule. However, the Commission has added several new factors, including advertisements that appear: (1) On television stations or channels directed to children under 12; (2) on radio stations directed to children under 12; and (3) preceding a movie, shown in a movie theater, directed to children under 12. The Commission has expanded these categories of advertising placement because under the final Rule, the criteria merely provide guidance as

[171] The proposed rule did not include the phrase "readership data" in connection with evidence to rebut the presumption that an advertisement was directed to children. However, in the final Rule the Commission added that phrase to clarify that the Rule is intended to cover evidence regarding readership of print media as well as viewership of broadcast media.

[172] Several commenters suggested that 50% was an appropriate threshold for determining whether an advertisement was directed to children under 12. Comments 19 (AAF) at 5; 43 (GMA) at 17–18; Tr. at 378 (GMA: "at least 50% would be a more realistic figure"), 380, 383 (PPI: "50% is a fair percentage").

[173] PPI and CME both urged the Commission to avoid a one-time look at audience composition data, but instead, to ensure that the data reflect audience composition over a reasonable period of time. Comments 37 (PPI) at 37; 53 (CME) at 15. While the Rule does not explicitly state that audience composition data be examined over time, the Commission contemplates that such data generally would be viewed over time, and not on a one-time basis. There may be instances, however, where a one-time look at audience composition or readership data will be sufficient to demonstrate that the receiving audience is composed of a majority of those under 12.

[174] Comment 37 (PPI), unnumbered attachment.

[175] As indicated above, the NPR specifically requested data regarding audience composition for different television shows. PPI did provide evidence and it amply supports the Commission's 50% threshold. In addition, during the public workshop conference, Commission staff asked again whether any participant had data regarding audience composition, and no additional data was supplied. One participant, AAAA, stated at the public workshop conference that nearly all Saturday morning cartoons and some of the afternoon specials specifically designed for children's viewing have an audience over 50% under 12. Tr. at 381–82.

[176] NAIS expressed concern that audience composition data does not exist for certain forms of advertising, such as product packaging. Comment 63 (NAIS) at 26. While not explicit, this provision is intended to cover situations where data does not exist. Thus, this provision does not require pay-per-call providers to conduct research to determine who may be viewing or receiving an advertisement, in the event that such data does not already exist.

[177] This section of the proposed rule was numbered 308.3(d)(2). 58 FR at 13386.

[178] *See Bolger* v. *Youngs Drug Products Corp.*, 463 U.S. 60 (1983) (even when Constitutional rights are implicated, weighing several criteria is permitted).

[179] ABC expressed concern that the phrase "after-school specials," as used in this section, referred specifically to the "ABC After-School Specials" which ABC asserts are geared toward a teen audience. Comment 20 (ABC) at 2. The final Rule modifies the phrase to the more generic "after school programs," to clarify that the Commission will consider the placement of an advertisement in any program that is directed to young children and shown in the afternoon.

to the type of media-placement that the Commission will consider. Thus, the addition of these factors will not create an additional burden on pay-per-call providers, but will merely provide notice to the industry that the Commission will consider such placement in its determination of what constitutes advertising of pay-per-call services to children under 12.

6. *Section 308.3(f): Advertising to Individuals Under 18*

As required by the TDDRA,[180] all pay-per-call advertisements directed primarily to individuals under the age of 18 are required to provide a clear and conspicuous parental permission disclosure. In the proposed rule,[181] advertisements directed to individuals under 18 were defined in terms of a rebuttable presumption based on the medium in which the advertisement was placed, as well as by the nature and content of the advertisement itself. The criteria used to determine if a program was directed to those under 18 were virtually identical to the criteria used to determine if a program was directed to children under 12.

In the proposed rule, advertisements directed primarily to individuals under 18 were presumed to include the following: advertisements appearing in publications directed primarily to individuals under 18 (*e.g.*, certain books, magazines and comic books); advertisements appearing during or immediately adjacent to television programs directed primarily to individuals under 18 (*e.g.*, mid-afternoon weekday television shows); advertisements broadcast on radio stations directed primarily to individuals under 18; and advertisements appearing on a commercially-prepared video directed primarily to individuals under 18. Finally, any advertisement, regardless of placement, that was directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like was presumed to be directed primarily to individuals under the age of 18. However, the proposed rule provided that this presumption could be rebutted with competent and reliable evidence demonstrating that the receiving audience was composed primarily of individuals aged 18 or older.

In the final Rule, the Commission has adopted the same approach for requiring the parental permission disclosure as it has in implementing the prohibition on advertising directed to children. Accordingly, § 308.3(f) of the final Rule sets forth the same two-part test and the same criteria—both in terms of the media-placement and nature and content of the advertisement—that the Commission will consider in determining whether an advertisement is directed primarily to individuals under the age of 18. This section of the final Rule also retains many of the criteria listed in the proposed rule.[182] In addition, the Commission has added two new criteria, including advertisements that: (1) Appear on cable or broadcast television stations directed primarily to individuals under 18; and (2) precede a movie, shown in a movie theater, directed primarily to individuals under 18. Like the additions to the criteria contained in § 308.3(e), these new factors do not create an additional burden on pay-per-call providers; they merely provide additional guidance as to the type of media placement that the Commission will consider.

Under the proposed rule, the standard required to demonstrate that the receiving audience was composed primarily of individuals aged 18 or older was different from the standard required to demonstrate that the receiving audience was composed predominantly of children aged 12 or older. These different standards ("predominantly" versus "primarily") were based on the specific language differences in the TDDRA. Thus, the Commission contemplated that in order to rebut the presumption that an advertisement was directed primarily to individuals under 18, the advertiser would need only to show that more than half of the receiving audience was 18 or older. In contrast, the Commission contemplated that in order to rebut the presumption that an advertisement was directed to children under the age of 12, the advertiser would have to show that more than two-thirds to three-quarters of the audience was 12 years of age or older.[183]

The Commission recognized, however, in the NPR, the potential difficulties raised by these provisions, and accordingly asked whether the use of the words "predominantly" and "primarily" was meaningful and whether the corresponding percentages contemplated by the Commission were appropriate. As discussed above in part II.B.5, *supra*, the Commission also requested audience composition data that would assist it in setting standards for audience size.

Few commenters focused specifically on the definition of advertisements to individuals under 18.[184] Those that did were divided as to whether the standard for rebutting the presumption should be the same as that for children under 12, or whether it should be different, based on dissimilar language used in the TDDRA.[185] The commenters that favored different standards generally based their assertions on the language of the statute.[186] These commenters also urged the Commission to set an even higher standard for rebutting the presumption that an advertisement was directed to individuals under 18. In contrast, several commenters objected to the proposed rule's reliance on two different standards; however, few provided reasons for their beliefs.[187] CA asserted that there was no justification for two standards and that in order to protect consumers, both standards should be set at 25% (*i.e.*, any audience composed of 25% or more of a certain age group would constitute an audience of that group).[188] On the other hand, GMA proposed a threshold of 50% for both groups.[189]

Based on its review of the comments, the Commission has decided to use the same standard of audience composition data for both groups.[190] As noted in the NPR,[191] the Commission contemplated in the original proposal that to rebut the presumption that an advertisement was directed primarily to individuals under 18, over 50% of the audience would have to be individuals 18 and over. Consistent with that policy, the Commission has determined that any advertisement, appearing where

[180] 15 U.S.C. 5711(a)(1)(E).

[181] In the proposed rule, this section was numbered 308.3(e). 58 FR at 13386–87.

[182] As noted above, the weight of the comments supported the criteria outlined in the proposed rule.

[183] 58 FR at 13381 (question 13).

[184] The reason for this may be that if an advertisement falls into this category, the only requirement is that the pay-per-call provider include a parental permission disclosure in the advertisement. In contrast, if an advertisement is deemed to be directed to children under 12, then it is completely prohibited under the Rule. Moreover, the industry already appears to include parental permission disclosures in many of its pay-per-call advertisements.

[185] The TDDRA prohibits advertisements *directed* to children under 12, but requires parental permission disclosure in advertisements *directed primarily* to individuals under 18. 15 U.S.C. 5711(a)(1) (D) and (E).

[186] Comments 40 (NACAA) at 6; 42 (NAAG) at 15; 53 (CME) at 16.

[187] Comments 21 (NCL) at 17; 31 (CA) at 7; 43 (GMA) at 17–18.

[188] Comment 31 (CA) at 7.

[189] Comment 43 (GMA) at 17–18.

[190] The reasons for deleting the rebuttable presumption from this section of the final Rule are the same as the reasons for deleting the similar presumption in the prohibition against advertisements to children under 12, discussed in part II.B.5, *supra*.

[191] 58 FR at 13374.

available audience composition or readership data demonstrates that a majority (more than 50%) of the viewing audience of the programming or the readership of the periodical is composed of individuals under 18, will be required to include the parental permission disclosure.[192] While the Commission initially contemplated the use of two different standards, upon examination of the record, the Commission has decided to adopt the same standard for both age categories. The legislative history does not provide any explanation for the discrepancy in statutory language, and it is not apparent that Congress had differing intents. The over-50% audience cutoff figure can just as reasonably be applied to the under-18 age group as it can to the under-12 group. As in the case with advertisements directed to children, if advertisements do not fall into this delineated category, the Commission will consider a number of other criteria in its determination to apply the Rule.

In the proposed rule, the parental permission disclosure was required to be clear and conspicuous, as that term was set forth in the rule. The proposed rule included requirements that in television or videotape advertisements, the video disclosure concerning parental permission be adjacent to the largest presentation of the pay-per-call number, and that each line of the video portion of the disclosure occupy at least one-tenth of the vertical field of the television screen. In any program-length commercial (*i.e.*, 15 minutes or longer), the video disclosure had to appear simultaneously with and for the same duration as each presentation of the pay-per-call number. In print advertisements, the disclosure was required to be adjacent to the largest presentation of the pay-per-call number, and each letter or numeral was required to be at least 12-point type. In any program-length radio commercial, the disclosure was required to be delivered immediately preceding each delivery of the pay-per-call number.

While the Commission received many comments pertaining to the clear and conspicuous standards set out in the proposed rule, including the specific size and placement specifications, the Commission did not receive many comments specific to the particular requirements set forth in this section of the proposed rule. Several comments favored the proposed size requirement for the parental permission disclosure,[193] while others opposed the specifications as too restrictive and rigid.[194] Another comment expressed concern that requiring both the cost and parental permission disclosures to be adjacent to the pay-per-call number would result in cluttered disclosures.[195] CME generally supported the rule as proposed, but saw no basis for exempting 15-second advertisements that contain no audio presentation of the pay-per-call number from the simultaneous audio-video disclosure requirements.[196]

Regarding the language of the parental permission disclosure, one commenter requested that the Commission adopt the language prescribed in its consent orders relating to children's 900 numbers.[197] Another commenter questioned whether an advertisement in a magazine with a readership composed of individuals 16–35 years old [198] could merely disclose that one must be 18 years old to call the service.[199] The Commission has decided not to require any specific language in advertisements directed to individuals under 18, nor will it provide "safe harbor" language in this instance. The Commission's existing orders in this area dealt with advertisements clearly directed at a very young age group (*i.e.*, Santa Claus and Easter Bunny lines), and therefore it was reasonable to construct a disclosure that could be easily understood by young children. In contrast, the Rule requires a parental permission disclosure in advertisements directed to an audience that may contain young children and teenagers.

Given the inherent difficulty of creating specific language that would be appropriate to a broad range of services and age groups, the Commission has declined to do so. Those who produce pay-per-call services can exercise their discretion in developing disclosures both appropriate to the particular service and appropriate to the age group in need of the required warning. Furthermore, there is evidence to suggest that when consumers view the same warning in advertisements over long periods of time, they ignore it because the disclosure has "worn out." [200] Thus, requiring specific language for this disclosure could have the unintended effect of desensitizing the target audience to the required warning. Accordingly, no specific language is mandated.[201]

As discussed in part II.B.1, *supra*, the final Rule requires that all disclosures comply with the standards set forth in § 308.3(a). In addition, each letter of the parental permission disclosure in any advertisement must be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number.

The Commission has modified the size requirements for the parental permission disclosure for the same reasons as those discussed above concerning the size requirements for the disclosure regarding the cost of the call.[202] The legislative history indicates that Congress was particularly concerned that the cost of the call and the parental permission disclosures be adequately conveyed to consumers. Therefore, the parental permission disclosure, like the cost disclosure, must be presented at least once simultaneously in both the audio and video portions of a television advertisement.[203] However, based on the comments, the Commission believes that it would be impractical to require that both disclosures appear adjacent to the pay-per-call number. The Commission recognizes the need of pay-per-call providers to have some flexibility in designing advertisements for their services. Thus, the parental permission disclosure need not appear adjacent to and simultaneously with the pay-per-call number. In television advertisements, however, the video disclosure must remain on the screen for sufficient time to allow consumers to read and comprehend it. The Commission believes that by maintaining the requirement that the

[192] One commenter specifically suggested that 50% was an appropriate threshold in the context of advertisements directed primarily to individuals under 18. Comment 43 (GMA) at 18. Many commenters simply did not address the issue. This over-50% figure, however, includes all those under the age of 18, including those below the age of 12 who happen to be in the audience. To the extent that advertising continues to reach the under-12 age group, it should include the parental permission warning.

[193] Comments 31 (CA) at 7–8; 53 (CME) at 17.

[194] Comments 37 (PPI) at 13–14; 43 (GMA) at 19; 63 (NAIS) AT 29.

[195] Comment 63 (NAIS) at 29.

[196] Comment 53 (CME) at 17–19.

[197] Comment 53 (CME) at 22.

[198] In placing an advertisement in a magazine with a readership of individuals between the ages of 16 and 35, the advertiser would have to consider the particular spread of that readership. If more than 50% of the readers were under 18, the advertisement would be considered directed primarily to those under 18. If less than 50% of the readers were under 18, the advertiser would have to look to the criteria set forth in § 308.3(f)(4) to determine whether the disclosure is required.

[199] Comment 35 (AIP) at 9.

[200] *See* footnote 132, citing marketing studies indicating that repetition of the same advertising message results in decreased effectiveness.

[201] The TDDRA requires a statement that conveys that individuals under 18 must have parental permission to call the number. Given this statutory mandate, the Commission believes that it is not sufficient for an advertisement merely to advise the viewer that one must be 18 years old to call.

[202] *See* part II.B.2, *supra*.

[203] The same limited exceptions that apply to this requirement in the cost disclosure section will also apply here.

parental permission disclosure be the same size as the cost disclosure, by tying these sizes to the size of the pay-per-call number,[204] and by requiring that the statement be in both the audio and video portions of television advertisements, the Rule ensures that the disclosure will be clear and conspicuous. Moreover, as discussed in part II.D.1.d, *infra*, *all* preambles for pay-per-call services must also state that individuals under 18 years of age must have their parent's permission before calling.

In any program-length advertisement (radio or television), the disclosure must be delivered at least three times, near the beginning, middle and end of the commercial. This should ensure that those who may tune in to only a portion of the commercial will nonetheless receive the information.

7. Section 308.3(g): Electronic Tones in Advertisements

The TDDRA mandates that the Commission prescribe a rule prohibiting a provider of pay-per-call services from using advertisements that emit electronic tones that can automatically dial a pay-per-call telephone number.[205] The proposed rule included this prohibition, and the Commission received no comments on this provision. Accordingly, it is included in the final Rule as proposed.

8. Section 308.3(h): Telephone Solicitations

The proposed rule required the provider of pay-per-call services to ensure that any telephone message soliciting calls to a pay-per-call service disclose the cost of the call in a slow and deliberate manner and in a reasonably understandable volume, in accordance with the cost disclosure requirements set out in the proposed rule at §§ 308.3(a)(1)(i)–(v). As explained in the NPR, such messages might be accessed through a toll-free telephone number, for example,[206] or through any regular long distance or local telephone exchange.[207] The Commission did not receive any comment on this provision, and it has been retained unchanged, except to reflect that the sections setting forth the cost disclosure requirements are now contained in §§ 308.3(b)(1)(i)-(v) of the final Rule.

9. Section 308.3(i): Referral to Toll-Free Telephone Numbers

The proposed rule closely tracked the language of the TDDRA,[208] and prohibited providers of pay-per-call services from referring in advertisements to an 800 telephone number, or any other telephone number advertised as or widely understood to be toll-free, if callers to that number may be connected to an access number for, or may otherwise be transferred to, a pay-per-call service. One commenter suggested that this section be expanded to prohibit advertisements referring to "toll-free numbers" for which any charge is levied due to the completion of the call.[209]

As will be discussed in part II.D.9, *infra*, the Commission has expanded the prohibition against providing pay-per-call services through an 800 or toll-free telephone number to parallel the statutory provision on common carrier requirements, as well as the relevant FCC regulations, restricting the use of 800 numbers. The prohibited uses of toll-free numbers now include: (1) The calling party being assessed a charge for the call simply by virtue of completing the call; (2) the calling party being connected to an access number for, or otherwise transferred to, a pay-per-call service; (3) the calling party being charged for information conveyed during the call, unless there is a presubscription or comparable arrangement; and (4) the calling party being called back collect for the provision of audio information services, simultaneous voice conversation services, or products.

The Commission believes that if pay-per-call services are prohibited on toll-free telephone lines, providers should not be permitted to advertise such services. Accordingly, this section of the final Rule states that providers of pay-per-call services are prohibited from referring in advertisements to an 800 telephone number, or any other telephone number advertised or widely understood to be toll-free, if that number violates the prohibition concerning toll-free numbers set forth in § 308.5(i) of the Rule.

C. Section 308.4: Special Rule for Infrequent Publications

In the TDDRA, Congress left to the discretion of the Commission whether to grant certain exemptions to "infrequent publications," based on the fact that many such publications have a policy against publishing specific prices.[210] The proposed rule allowed an exemption from the cost disclosure requirements for advertisements for pay-per-call services that appear in publications that meet certain requirements. This section is intended to cover publications such as a yellow pages telephone directory, or other publications published on an infrequent basis. Instead of the usual cost disclosures required by the proposed rule, advertisements for pay-per-call services in this type of publication are permitted simply to include a clear and conspicuous disclosure that a call to the pay-per-call service may result in a substantial charge above the long-distance charge. In order to qualify for this exemption, the proposed rule required that the publication be: (1) Widely distributed; (2) printed annually or less frequently; and (3) one that has an established and written policy of not publishing specific prices in advertisements.

The final Rule retains the exemption for infrequent publications, with several modifications, as noted below.[211] First, the Rule does not require that an infrequent publication's policy against publishing specific prices be in *writing*, only that it be an *established* policy. In the NPR, the Commission specifically asked whether it would be sufficient if a publication had an established, but unwritten, policy of not publishing prices.[212] While few commenters

[204] As noted in the cost disclosure section, above, there may be certain kinds of advertisements in which a type size one-half the size of the pay-per-call number would not be adequate to provide a clear and conspicuous disclosure.

[205] 15 U.S.C. 5711(a)(1)(F).

[206] As required by the TDDRA, 15 U.S.C. 5711(a)(2)(F), the final Rule, at § 308.5(i), prohibits the providing of pay-per-call services through toll-free telephone numbers. Thus the caller cannot be connected or transferred to a pay-per-call service after calling a toll-free number. However, there is no prohibition against using a toll-free number to advertise a pay-per-call service so long as no direct connection or transfer to the service can be made.

[207] The Telephone Consumer Protection Act of 1991, 47 U.S.C. 227 ("TCPA"), would ban all computer-generated calls to homes, including those soliciting calls to pay-per-call services, unless such calls are made for emergency purposes or the subscriber consents in advance to them. The TCPA became effective December 20, 1992. However, the United States District Court for the District of Oregon found that this provision of the TCPA placed an unconstitutional restriction on protected commercial speech, and therefore prohibited its enforcement. *Moser* v. *FCC*, No. 92–1408–RE (D. Or. May 21, 1993). On July 19, 1993, the government filed, in the U.S. Court of Appeals for the 9th Circuit, a notice of appeal of this decision.

[208] 15 U.S.C. 5711(a)(1)(I).

[209] Comment 21 (NCL) at 17–18.

[210] 15 U.S.C. 5711(a)(7).

[211] One commenter, CA, opposed the exemption for infrequent publications because it feared that such an exemption would create a loophole that would allow providers to avoid disclosure requirements set forth in other sections of the Rule. CA stated, however, that if such an exemption were created, it should be tightly regulated to protect consumers. Comment 31 (CA) at 8. The Commission is persuaded by the weight of the comments that the Rule should include an exemption for infrequent publications. The requirement that the publication be published annually, or less frequently, lessens the likelihood that such a publication will be a popular forum for advertising pay-per-call services.

[212] 58 FR at 13382 (question 17.b).

focused specifically on this issue, those that did were unanimous in their opposition to the requirement in the proposed rule that such policy be in writing.[213] One commenter, YPPA, suggested that such a requirement would create a disproportionate burden on smaller directory publishers because many of these publishers do not maintain the staff necessary to draft and analyze written policies.[214] The commenter further explained that, while most directory publishers do, indeed, have an established policy against publishing specific prices, many do not have a written policy to that effect.[215] Thus, it could be costly for many infrequent publishers to develop a written policy regarding the publication of prices for pay-per-call services. Moreover, the language of the TDDRA describes a publication with an "established policy" against publishing specific prices, and does not mention the need for a written policy.[216] Thus, the Commission is persuaded that the requirement in the proposed rule that infrequent publications must have a written policy against publishing specific prices in advertisements in order to qualify for this exemption is unnecessarily restrictive; accordingly, the final Rule does not contain such a requirement.[217]

Second, in the actual disclosure requirement for infrequent publications, the final Rule deletes the phrase "above the long-distance charge," and will only require a disclosure that the call may result in a "substantial charge." One commenter, US West, indicated some confusion as to whether the language as originally proposed was prescriptive (*i.e.*, whether the language in the proposed rule was always required in the advertisement) and also whether the disclosure requirement applied only to pay-per-call services in which a long-distance charge was also going to be assessed.[218] US West correctly noted that in some cases, a call to a pay-per-call service may not, in fact, result in a charge greater than one might expect to pay for a long-distance call.[219] US West also noted that the TDDRA did not require this additional language. The TDDRA merely stated that in lieu of requiring infrequent publications to publish specific prices, such publications could be required to disclose that a "substantial charge" may be incurred.[220] The Commission believes that US West has raised a legitimate concern, and that the phrase "above the long-distance charge" in the proposed rule may be confusing. Thus, § 308.4(a) of the final Rule requires that an advertisement in an infrequent publication clearly and conspicuously disclose only that a call to the advertised service may result in a *substantial charge*. While the Commission does not intend for the actual language of this provision to be required to be used in the advertisements, any disclosure would have to convey the message that the charge for the call might be significant—*i.e.*, more than a consumer might expect to pay for a local or even a long-distance telephone call. For example, it is the Commission's opinion that the use of the phrase "pay-per-call" adjacent to the pay-per-call number in such an advertisement, as suggested by one commenter,[221] would not suffice, as it does not necessarily convey this message.

The proposed Rule did not address requirements for alphabetical listings contained in infrequent publications, such as the white or yellow pages alphabetical listings. Although the Commission did not specifically solicit comments on this issue, several commenters proposed that the final Rule exempt from *all* disclosure requirements any alphabetical listings contained in such publications.[222] Although such listings are paid for, they are, as YPPA noted, usually limited to the name, address, and telephone number of the pay-per-call provider. Moreover, the listings themselves occupy a very small amount of space, leaving virtually no room in or adjacent to the listing for any disclosures.[223] The Commission is persuaded that if the final Rule requires that all disclosures set forth in the proposed rule be included in alphabetical listings of the type commonly found in telephone directories, then such listings would not be feasible for listing pay-per-call providers' names and telephone numbers. Based on the comments, the Commission has decided to add a section to the final Rule, stating that the provider of a pay-per-call service that places an alphabetical listing in an infrequent publication is not required to make *any* of the disclosures required by § 308.3, provided that such listing does not contain any information except the name, address, and telephone number of the pay-per-call provider. The inclusion of any additional information, such as a slogan, would trigger all relevant disclosure requirements.

D. *Section 308.5: Operation of Pay-Per-Call Services*

Section 308.5 of the Rule sets forth the various requirements and prohibitions that apply to the operation of pay-per-call services.

1. *Section 308.5(a): Preamble Message*

As required by the TDDRA, each pay-per-call message must be preceded by an introductory message, or preamble, that discloses various facts relevant to the consumer's decision to complete the call and incur the charge for the service.[224] These disclosures are set forth in § 308.5(a) of the Rule. Both NACAA and NAAG suggested that the Rule require the preamble to precede any other information in the pay-per-call message.[225] This is the intent of the Commission, and the Commission believes the Rule imposes this requirement by describing the preamble as "an introductory disclosure message."

(a) Section 308.5(a)(1): Name of Provider and Description of Service

The preamble must identify the name of the provider of the pay-per-call service and describe the service that is offered. The TDDRA requires description of the service, but not identification of the name of the provider.[226] However, FCC regulations that have governed the interstate transmission of pay-per-call services by common carriers since 1991 have required identification of the name of the provider in the preamble.[227] The

[213] Comments 56 (YPPA) at 3–7; 57 (US West) at 20; 63 (NAIS) at 31. Another commenter, AIP, opposed the requirement that the publication be published annually or less frequently. Comment 35 (AIP) at 9–10. However, the TDDRA specifically states that any exemption for cost disclosures be permitted only in publications that are published annually or less frequently. 15 U.S.C. 5711(a)(7). Therefore, the Commission will retain that condition.

[214] Comment 56 (YPPA) at 4, 6–7.

[215] *Id.* at 3–7.

[216] 15 U.S.C. 5711(a)(7).

[217] However, such a publication will have the burden of proving that it had an established, but unwritten, policy against publishing specific prices in advertisements.

[218] Comment 57 (US West) at 21–22.

[219] Comment 57 (US West) at 22.

[220] 15 U.S.C. 5711(a)(7).

[221] Comment 57 (US West) at 22.

[222] Comments 56 (YPPA) at 11; 57 (US West) at 21.

[223] Comment 56 (YPPA) at 11. YPPA also noted that this exclusion is explicit in some state laws. *See* Iowa Admin. Code 714A.1(1) (1992).

[224] 15 U.S.C. 5711(a)(2)(A).

[225] Comments 40 (NACAA) at 8; 42 (NAAG) at 16.

[226] 15 U.S.C. 5711(a)(2)(A)(i).

[227] 47 CFR 64.711(b) (to be deleted as of November 1, 1993). With the promulgation of both FTC and FCC regulations pursuant to the TDDRA, the FCC will rescind its preamble requirements. The new FCC rule obligates any common carrier assigning a telephone number to a pay-per-call service provider to require, by contract or tariff, that such provider comply with regulations promulgated by the FTC pursuant to titles II and III of the TDDRA. 47 CFR 64.1502.

FCC noted that this requirement would "provide important additional information to the consumer with little or no additional burden on the (interexchange carriers) or information providers."[228]

The Commission sought comment as to the usefulness of this requirement, and asked whether the address or location of the pay-per-call service provider should also be disclosed in the preamble.[229] Identification of the provider in the preamble was supported by USTA, VRS, CA, NACAA, USPS, and Sprint.[230] USTA suggested that this requirement helps to "eliminate the possibility of an erroneous perception of an affiliation between the local telephone company and a 900 service provider in the eyes of the customer." USPS pointed out that the information may help a consumer to avoid dealing with an entity with whom he or she has had problems in the past. Sprint, CA, and USPS supported preamble disclosure of the address of the provider; Sprint and CA also advocated inclusion of the provider's business telephone number in the preamble. PPI opposed the requirement, stating that the identity of the provider was irrelevant in most cases and should be left to the discretion of the pay-per-call provider.[231] NII asserted that the information could be confusing to the caller, who may be familiar with the name of the program but not the corporate identity of the pay-per-call provider.[232]

The Commission has determined that it is appropriate to require identification of the name of the provider in the preamble. The industry has been required to incorporate this information into the preamble since the FCC regulations went into effect in 1991. No member of the industry has argued that it is burdensome to do so. Moreover, as pointed out by USTA, the information may be important in some cases to dispel erroneous consumer perceptions about the identity of the pay-per-call provider. Because of the unique nature of this transaction, the consumer generally will have little or no idea of the identity of the business entity before placing the call and incurring the charge. Since the information may be of benefit to some consumers, and the obligation to provide it does not appear to be burdensome to the industry, the requirement will be retained.

However, the Rule will not require that additional information, such as the address and business telephone number of the provider, be given in the preamble. There is little basis to conclude that this additional information would be particularly beneficial to consumers in a preamble. Moreover, the information with regard to the address is otherwise available to consumers. Pursuant to FCC regulations, common carriers assigning telephone numbers to pay-per-call providers, and offering billing and collection services to such providers, must establish a local or toll-free telephone number to answer consumers' questions regarding pay-per-call services and to give callers the name and mailing address of the provider of any pay-per-call service offered by that carrier.[233] This toll-free number must appear in any telephone bill containing charges for such services.[234]

(b) Section 308.5(a)(2): Cost of the Call

The preamble must disclose the cost of the call. The TDDRA requires that this disclosure include "the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred."[235] The preamble requirement in the final Rule, § 308.5(a)(2), parallels the cost disclosure requirement for advertising, set forth in § 308.3(b)(1). If a flat fee is charged for the call, the preamble must disclose the total cost. If the call is billed on a time-sensitive basis, the preamble must state the cost per minute and any minimum charges. In addition, if the length of the program can be determined in advance, the preamble must disclose the maximum charge that could be incurred if the caller listens to the complete program.

Some industry associations opposed this latter requirement, which is phased slightly differently in the final Rule than it was in the NPR.[236] Both IISC and NAIS asserted that the FTC has exceeded its statutory authority by requiring a disclosure of total cost in some instances where the pay-per-call provider assesses charges on a time-sensitive basis. They argued that the TDDRA's use of the word "or" in the phase "the total cost or the cost per minute"[237] precludes the Commission from adopting this provision.[238]

The Commission does not believe its statutory mandate to be so restricted, particularly in light of other language in the TDDRA which authorizes the Commission to adopt additional measures to prevent practices that might evade the Rule or otherwise undermine its protections.[239] The provision applies only in those limited situations where the program is a fixed duration, but the pay-per-call provider has elected to impose a per minute charge rather than a flat fee.[240] If the complete program is 10 minutes in length, but the advertising and preamble disclose only that the cost is $2.95 per minute, the consumer cannot make an informed choice to place the call, without knowing that the full price of the information will be $29.50. In the absence of any requirement that the total cost be disclosed in this instance, there would be an incentive for some pay-per-call providers to lengthen the program and place key information near the end of the program to discourage the caller from hanging up.

Moreover, this disclosure has been required under FCC regulations since 1991.[241] In adopting its preamble requirement, the FCC stated: "The benefits to consumers in the form of full knowledge of the total cost for pay-per-call programs which have a predictable duration will outweigh the minimal

[228] FCC, Report and Order, Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65, ¶ 26 at 13 (October 23, 1991) ("FCC 900 Telecommunications Services Rule of 1991").

[229] 58 FR at 13382 (question 18).

[230] Comments 16 (USTA) at 14; 23 (VRS) at 5–6; 31 (CA) at 8–9; 40 (NACAA) at 8; 59 (USPS) at 7–8; 81 (Sprint) at 7.

[231] Comment 37 (PPI) at 39.

[232] Comment 73 (NII) at 5.

[233] 47 CFR 64.1509.

[234] 47 CFR 64.1510. Under the FTC Rule, § 308.5(j), pay-per-call providers must ensure that any billing statement for their services includes this local or toll-free telephone number. *See* section II.D.10, *infra*. This requirement ensures that billing entities that are not common carriers will also be obligated to display this information on the bill. The failure to display this number on the bill would constitute a billing error, pursuant to § 308.7(a)(2)(viii) of the Rule.

[235] 15 U.S.C. 5711(a)(2)(A)(ii).

[236] The proposed rule stated: "If the duration of the program can be determined in advance, the preamble shall also state the total cost for the complete program." 58 FR at 13387. The wording has been changed in order to clarify the intent of this provision.

[237] 15 U.S.C. 5711(A)(1)(A) and (a)(2)(A)(ii).

[238] Comments 39 (IISC) at 12–13, 25–26, 42; 63 (NAIS) at 11–12, 34.

[239] 15 U.S.C. 5711(a)(4) states: "The rules issued by the Commission under this section shall include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title, including through the use of alternative billing or other procedures."

[240] The obligation to disclose total cost will not apply to programs of undetermined length, such as programs that are interactive or asynchronous because they depend upon input from or options selected by the caller (other than the ultimate option of hanging up prior to completion of the program or the option of repeating the program, if available). Some industry representatives indicated at the public workshop conference that they had no objection to a required total cost disclosure for time-based calls so long as such a provision applied only to those programs that would not vary in length. Tr. at 110, 127–28.

[241] 47 CFR 64.711(a) (to be deleted as of November 1, 1993).

difficulties that some information providers may have in implementing this disclosure requirement."

The proposed rule additionally required, for time-sensitive calls where the duration of the program could not be determined in advance, that the preamble state that the length of the call is subject to caller discretion. The proposed disclosure was qualified by the phrase "unless it is otherwise clear from the context that such is the case." [242] The Commission asked whether this additional disclosure was necessary and appropriate.[243] Various providers of pay-per-call services and industry associations asserted that this language is unnecessary.[244] Some believed it to be self-evident that when charges are stated on a per-minute basis, the length of the call is determined by the caller. Other comments suggested that the qualifying language ("unless it is otherwise clear from the context * * *") was ambiguous and confusing.[245]

The Commission has dropped this proposal requiring disclosure that the length of the call be subject to caller discretion. The Commission is persuaded that in most instances, that fact will be self-evident to the consumer. Moreover, the Commission is concerned about unduly lengthening both the parable and the required advertising disclosures by an added statement that may have only marginal consumer benefit.[246]

The proposed requirement for disclosure of the cost of variable rate calls, § 308.5(a)(2)(iii), evoked very little comment. This provision remains unchanged in the final Rule. For these calls, the preamble must state the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on options chosen by the caller. This seems to be the minimum necessary information that should be disclosed for complex programs which involve varying rate structures. The capability for variable-rate billing within the same call leaves open the possibility of deception and abuse if the multi-rate structure is not carefully disclosed to the consumer. The Commission has tried to construct a disclosure requirement to preclude this possibility of misuse.

Finally, the Rule at § 308.5(a)(2)(iv), as mandated by the TDDRA,[247] requires disclosure of any other fees that will be charged for the service, as well as fees for any other pay-per-call service to which the caller may be transferred. The required disclosure of "any other fees * * * for the service" prevents a pay-per-call provider from imposing undisclosed, additional charges for the service by designating them as something other than the cost of the call. For example, such additional fees might include charges for computer time, or charges for the mailing of print information that the consumer is supposed to receive by calling the 900 number. AIP noted that "(t)he proposed rules do not specify whether usual toll charges must be disclosed where such tolls are charged in addition to the charge for pay-per-call services." [248] The Commission believes that the clear intent of the TDDRA is to require full disclosure of all fees the consumer will be charged in order to receive the advertised service. If the pay-per-call provider imposes a "toll" charge upon the caller, in addition to the charge for the pay-per-call service itself, that charge should be disclosed in advertising and the preamble. Likewise, if multiple calls to the same or a different number are required to receive the advertised service, those charges must also be disclosed.

Both NACAA and NAAG propose that the Commission prohibit a pay-per-call provider from transferring a caller from one pay-per-call service to another.[249] However, the TDDRA does not prohibit this practice.[250] It requires only that full disclosure be made, in both advertising for and the preamble to the first pay-per-call, of the cost of any service to which the caller may be transferred. Given the apparent congressional intent to permit this practice, so long as full disclosure is made, the Commission declines to prohibit all such transfers. It is hoped that by requiring the disclosure of the costs of multiple services within one advertisement and one preamble, the use of such transfers will be limited to those services where such a transfer may perform a legitimate, non-deceptive purpose. The disclosure obligation applies to any program where the caller may be transferred to another pay-per-call service without hanging up and dialing the second number.

(c) Section 308(a)(3): Changes Begin After the Preamble

The preamble must state that charges for the call will begin, and that to avoid charges the call must be terminated, three seconds after a clearly discernible signal or tone indicating the end of the preamble. The TDDRA makes no reference to a signal or tone. However, it requires that callers be informed that charges begin at the end of the introductory message and that the pay-per-call provider enable the caller to hang up at or before the end of that message without incurring any charge whatsoever.[251] The Commission included the tone requirement in the proposed rule,[252] and various parties commented on this provision. AT&T supported the proposal, noting that "(t)his signal or tone would clarify any possible misunderstanding of when the charges will begin." [253] However, AT&T noted that such a tone is not currently available from the carrier and must emanate from the provider's equipment. Some industry associations and pay-per-call providers opposed the requirement, asserting that a tone is intrusive, unnecessary, and inappropriate for calls involving live conversation.[254] Their views were repeated at the public workshop conference. On the other

[242] 58 FR at 13387.

[243] 58 FR at 13380 (questions 4 and 5) and 13382 (question 19).

[244] Comments 22 (Meganews) at 4; 37 (PPI) at 29–31, 40; 39 (IISC) at 29; 52 (iia) at 22; 61 (ICN) at 4–6 Tr. at 112–114.

[245] Comments 35 (AIP) at 3–4; 40 (NACAA) at 4.

[246] IISC noted that many states, as well as some industry guidelines, require that advertising for pay-per-call services billed on a time-sensitive basis disclose the length of the average call. Comment 39 (IISC) at 28–29. NAAG proposed that the FTC require disclosure in advertising of the average cost of the call as well as a statement that "the total amount of the charges increases each minute that the customer stays on the line." Comment 42 (NAAG) at 12 and Attachment 1 at 2. USPS recommended that both advertising and preambles for certain calls, involving recorded programs that require some caller interaction, disclose either the average length and cost of the call or the minimum and maximum length and cost. Comment 59 (USPS) at 3 and 8. The FCC, in 1991, declined to include an average cost disclosure in its preamble requirement. It did so because of the difficulties in calculating a meaningful average, and because it was "concerned that an average cost requirement could, itself, be used to deceive consumers." FCC 900 Telecommunications Services Rule of 1991, ¶ 23 at 12. The FTC likewise shares these concerns. For example, the average call might be short if a number of consumers hang up prematurely because the service did not meet their expectations. Accordingly the commission declines to include an average cost or length disclosure requirement in either advertising or the preamble.

[247] 15 U.S.C. 5711(a)(2)(A)(ii).

[248] Comment 35 (AIP) at 3.

[249] Comments 40 (NACAA) at 4; 42 (NAAG) at 12.

[250] It appears that the TDDRA did intend to prohibit transfer from an 800 or other toll-free number to a pay-per-call service (15 U.S.C. 5711(a)(1)(I) and (a)(2)(F)), and the Commission has done this in § § 308.3(i) and 308.5(i)(2) of the Rule. *See* parts II.B.9, *supra*, and II.D.9, *infra*.

[251] 15 U.S.C. 5711(a)(2)(A)(iii) and (a)(2)(B).

[252] 58 FR at 13387.

[253] Comment 62 (AT&T), Attachment A at i.

[254] Comments 22 (Meganews) at 4; 35 (AIP) at 11; 37 (PPI) at 16, 41; 61 (ICN) at 6; 63 (NAIS) at 39. Some of the opposition to the proposal seemed to be based on the assumption that the FTC would require the tone to be generated by the carrier. This was not the intent of the proposed requirement, and apparently such a system is not technologically feasible at the present time.

hand, NCL and NACAA both emphasized that a tone is a clear, easily-understood signal and one that is familiar to many telephone-users because of its prevalent use on telephone answering machines.[255]

It is the judgment of the Commission that such a signal or tone is a useful and important benchmark to indicate to the caller that the introductory message has concluded and charges are about to begin.[256] In fact, a similar requirement has been in place since the FCC adopted its regulations in 1991. Those regulations mandate that billing begin only "after a specific identified event following the disclosure message, such as a signal tone."[257] The required signal or tone need not be intrusive and annoying as feared by some industry commenters. It could be a chime or other musical note that is pleasing to the ear, so long as it is clearly discernible by the caller.

In addition to the signal or tone, the proposed rule also stated that the preamble shall inform the caller that he or she "may avoid any charge for the call by hanging up at or before the sound of the tone."[258] A few commenters opposed this provision, describing the message as an unnecessarily negative "kill message."[259] The language of the final Rule makes clear that callers must be informed both when charges begin and how to avoid being charged for the call. However, the Commission does not intend to mandate any specific language for this portion of the preamble. The choice of words is left to the discretion of the pay-per-call provider, so long as the caller is left with no doubt as to when he or she must hang up to avoid being charged for the call.

(d) Section 308.5(a)(4): Parental Permission Required for Those Under 18

The preamble must state that anyone under the age of 18 must have parental permission to make the call. Some commenters suggested that the disclosure not be required for all pay-per-call programs, but only those programs directed to, or likely to be of interest to, individuals under 18.[260] However, the TDDRA clearly requires the disclosure to be included on all pay-per-call programs.[261]

A few commenters suggested that the Commission provide model, safe harbor language for the parental permission advisory.[262] CME proposed, for example: "This telephone call costs money. If you are under 18 and you do not have your mom or dad's permission, hang up now and there will be no charge for this call." This language was derived from FTC consent orders with certain pay-per-call providers.[263] While there is merit to the CME proposal, the Commission has decided not to try to write a specific disclosure that might be appropriate to all pay-per-call programs. The language mandated by the FTC consent orders, and now proposed by CME, was created for pay-per-call programs specifically directed to young children. Such programs are now prohibited by the TDDRA and § 308.5(h) of this Rule. However, the parental permission advisory must be included in the preambles to all pay-per-call programs. Some of these programs will be directed, or clearly of interest, to those under 18. Other programs may hold little interest for that age group. Given the inherent difficulty of creating specific language that would be appropriate to such a broad range of programs, the Commission has declined to do so. Those who produce pay-per-call programs can exercise their discretion in developing disclosures that are appropriate both to the particular program and to the age group to which the words are directed.

NACAA proposed a requirement that the parental consent advisory be stated in language that is "no higher than a fifth-grade level."[264] It is essential to the effectiveness of this disclosure requirement that it be clear and readily understandable to the population under the age of 18, including some children under the age of 12.[265] However, the Commission is not convinced that it is necessary to mandate a specific educational standard for the disclosure.

(e) Section 308.5(a)(5): Information About a Federal Program

Finally, if the pay-per-call service provides information about a Federal program, but is not operated or authorized by any Federal agency, the preamble must state that the service is not authorized, endorsed, or approved by any Federal agency. In the proposed rule, this provision simply tracked the requirement set forth in the TDDRA.[266] However, for the reasons discussed above with regard to § 308.3(d) of the Rule (which requires a similar disclosure in advertising for such services), the Commission has determined that the requirement should be further clarified. Therefore, language has been added to this provision, § 308.5(a)(5), to make clear that the disclosure is required if the pay-per-call service uses a trade or brand name, or any other term that reasonably could be interpreted to imply a Federal government connection, approval, or endorsement. Thus, a program which purports to provide information about a federal benefit program, while actually trying to sell a product or service, would be obligated to make the disclosure. Likewise, a program that does provide information on a Federal program, in more than an incidental manner, would also be required to give the disclosure.[267]

2. Section 308.5(b): No Charge to Caller for Preamble Message

The TDDRA requires providers of pay-per-call services to enable callers to hang up at or before the end of the preamble message without incurring any charge whatsoever.[268] In the proposed rule, the Commission expanded on this requirement by allowing consumers to hang up without charge at any time prior to five seconds after the conclusion of the preamble. The Commission proposed this additional brief period in order to give consumers sufficient time, after hearing the complete preamble message, to make the decision to disconnect and to do so without incurring any charge for the call.

In the NPR, the Commission sought comment on the following aspects of this provisions: (1) Its usefulness, as well as its costs and benefits; (2) whether five seconds was a sufficient length of time to assure that consumers who hang up at the end of the preamble

[255] Tr. at 168–81.

[256] The Rule then requires an additional three-second delay to allow the caller sufficient time to hang up after the signal or tone. See discussion of § 308.5(b), *infra*.

[257] 47 CFR 64.711(c) (to be deleted as of November 1, 1993).

[258] 58 FR at 13387.

[259] Comments 39 (IISC) at 42; 61 (ICN) at 6; 63 (NAIS) at 34.

[260] Comments 34 (TPI) at 6–7; 37 (PPI) at 16, 40; 61 (ICN) at 6.

[261] 15 U.S.C. 5711(a)(2)(A)(iv).

[262] Comments 53 (CME) at 22–23; 60 (Pilgrim) at 12.

[263] *Audio Communications, Inc.*, No. C–3338 (July 24, 1991); *Teleline, Inc.*, No. C–3337 (July 24, 1991); *Phone Programs, Inc.*, D. 9247 (Dec. 10, 1992); *Fone Telecommunications*, File No. 912–3086 (March 17, 1993).

[264] Comment 40 (NACAA) at 8.

[265] This population necessarily includes some children under the age of 12. Even though pay-per-call programs, and advertisements for such programs, cannot be directed to those under 12 (§§ 308.3(e) and 308.5(h)), children in that age group can and do call pay-per-call services.

[266] 58 FR at 13387; 15 U.S.C. 5711(a)(2)(A)(v).

[267] However, data services, providing the non-verbal transmission of information, are exempt from the preamble requirement under § 308.5(d) of the Rule.

[268] 15 U.S.C. 5711(a)(2)(B).

will not be billed for the call; and (3) whether the Rule should require some period of silence between the end of the preamble and the start of the program to indicate to consumers that this was the appropriate time to hang up if they so choose.[269] A number of law enforcement agencies and public interest organizations supported some period of time between the end of the preamble and the commencement of charges.[270] For example, a NARUC resolution recommended that any Federal regulation of pay-per-call services require sufficient time after the preamble to allow the caller to hang up without incurring a charge. In addition, New York currently requires ten seconds between the end of the preamble and the commencement of charges, for intrastate pay-per-call services, to give the consumer adequate time to respond to the information in the preamble.[271]

On the other hand, a number of providers and associations representing their interests opposed any such delay in the commencement of charges as unnecessarily burdensome and restrictive.[272] PPI noted that each additional second in the introductory period costs the information provider one cent. Other providers stated their belief that consumers have sufficient notice to hang up if they do not wish to be charged, given the preamble and the tone requirement.[273]

The Commission believes that consumers must be given some period of time, after listening to the entire preamble, to physically hang up the telephone and still not be charged for the call. In an effort to balance the needs of consumers with the cost of this requirement to providers of pay-per-call services, the Commission has decided to reduce the required period of time to three seconds. AT&T noted at the public workshop conference that a three-second period of silence currently is required by that carrier, for pay-per-call services on its network, between the end of the preamble message and the commencement of charges. According to AT&T, it has no evidence to indicate that such a time period is inadequate.[274] The Commission believes this brief interval will be sufficient to address consumers' needs, while minimizing the costs to providers.

As for the question of silence after the preamble, PPI noted that any silence on a pay-per-call service is "deadly" to the provider, since consumers hang up when they hear silence.[275] At least two other providers raised a similar concern at the public workshop conference.[276] Given this potential for harm to the providers of pay-per-call services, the Commission has determined that no period of silence is necessary between the preamble and the start of the message. The Commission does not believe that consumers will be confused if the message begins immediately after the preamble, especially since consumers will hear a signal or tone indicating that the preamble has ended.[277]

At least two commenters suggested, as an alternative to a period of delay between the preamble and billing, that the Rule permit providers to allow consumers an affirmative means of positively accepting charges for a pay-per-call service.[278] For example, a pay-per-call service may state in the preamble that consumers must press a certain key on their telephone keypad to indicate that they accept the charges for the service. The program would not begin until consumers take the required positive action. Although the major carriers do not offer positive acceptance at this time,[279] the Commission believes this option should not be precluded by the regulations. Positive acceptance gives consumers adequate time to decide if they wish to be billed for the call. Any further delay after the consumer indicates acceptance of charges and before billing commences would be superfluous. Accordingly, the final Rule adopts this provision as an exception to the required three-second period after the end of the preamble.

As a final matter, a number of commenters suggested that providers should be permitted to bill consumers for the cost of the preamble, if the consumer in fact decides to remain on the line after the preamble is complete.[280] On the other hand, at the public workshop conference, both NAAG and NACAA objected to any such provision, stating that the preamble is like a price tag for which the consumer should not be required to pay.[281] While the Commission understands the providers' contention that charging consumers for the preamble on completed calls may be equitable, we believe an argument can be made that the TDDRA prohibits such charges.[282] At a minimum, the statutory language signals congressional disfavor for charging consumers for the preamble time. Moreover, the FCC recently considered this issue, and concluded that providers should not be permitted to charge consumers for the preamble.[283] Accordingly, the Commission declines to adopt such a provision.

3. Section 308.5(c): Nominal Cost Calls

The TDDRA gives the Commission the discretion to exempt from the preamble requirements pay-per-call services provided at "nominal charges, as defined by the Commission."[284] As stated in the NPR, "(t)his exemption provision recognizes that below a certain minimal level, it may not be cost effective for the provider to offer the service if all of the disclosures required by § 308.5(a) must be included in a preamble for which the consumer cannot be charged."[285] Therefore, the proposed rule exempted from the preamble requirements any pay-per-call service for which the total cost, whether billed on a flat rate or a time sensitive basis, is $2.00 or less. The Commission also asked a series of detailed, factual

[269] 58 FR at 13382 (question 21).

[270] Comments 10 (NARUC) at 4, 18; 31 (CA) at 9 (at least five seconds of silence; if no silence, at least a ten-second delay); 40 (NACAA) at 8 (five seconds of silence); 59 (USPS) at 8 (at least two or three seconds of silence).

[271] Comment 27 (NYDPS) at 2.

[272] Comments 22 (MegaNews) at 4; 37 (PPI) at 41; 39 (IISC) at 42; 61 (ICN) at 6–7; 63 (NAIS) at 34–35.

[273] *See, e.g.*, comment 22 (MegaNews) at 4.

[274] Tr. at 136.

[275] Comment 37 (PPI) at 41.

[276] *See* statement of TPI, Tr. at 158. In addition, Blake Barker of USA Today noted that in 1988, when he was a provider of an interactive weather service, the local public utility commission mandated six seconds of silence between the end of the preamble and the start of the message. Within 90 days, Mr. Barker stated that the completed calls to this service dropped by 63 percent because consumers incorrectly thought there was a problem with the service. Tr. at 264–65. *See also* Tr. at 119.

[277] At least one commenter suggested that the proposed regulations were unclear as to the sequence of events required at the beginning of a pay-per-call service. *See* comment 52 (IIA) at 32. The Commission believes the final Rule clearly requires the following sequence of events: (1) A preamble message, containing all of the information required by § 308.5(a); (2) a signal or tone, indicating the end of the preamble; and (3) an additional three seconds after the sound of the signal or tone, which do not have to be silent, before charges may begin.

[278] Comments 23 (VRS) at 6–7; 60 (Pilgrim) at 13–14.

[279] Tr. at 149–50.

[280] Comments 35 (AIP) at 10–11; 51 (USA Today) at 3, 9–10; 61 (ICN) at 6–7; 63 (NAIS) at 37.

[281] Tr. at 102–03, 167.

[282] For example, the TDDRA states that preambles should inform the caller that charges for the call begin at the end of the introductory message, 15 U.S.C. 5711(a)(2)(A)(iv), and that providers should enable the caller to hang up at or before the end of the introductory message without incurring any charge whatsoever 15 U.S.C. 5711(a)(2)(B).

[283] FCC, Order on Reconsideration, Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91–65, ¶¶ 12–17 at 7–9 (March 10, 1993) ("FCC Reconsideration Order").

[284] 15 U.S.C. 5711(a)(5)(B).

[285] 58 FR at 13375.

questions to determine whether the $2.00 fee level was appropriate.[286]

A large number of commenters suggested various rates at which the nominal cost exemption should be set, but most commenters provided little if any factual information to support their contentions. In a second attempt to gain useful data, Commission staff at the public workshop conference asked those in attendance for specific factual information to support an appropriate nominal cost level. Once again, very little evidence was forthcoming.[287]

The commenters presented the following factual information to us. First, MCI indicated that in 1992, more than 50 percent of all consumer requests for credit for pay-per-call services that it received were for services costing more than $10.00, while less than 30 percent of consumer credit requests were for calls of $5.00 or less.[288] PPI submitted an ATT&T graph showing that during February of an unidentified year, the refund rate for calls below $10.00 was less than two percent.[289] USA Today cited comments in the FCC rulemaking proceeding by a "major interstate carrier," which stated that 12 percent of the total amount of pay-per-call services on that carrier's network fell below $2.00 in charges, while 30 percent were under $5.00 in total charges. The chargeback rate for these programs was less than 2 percent.[290]

While an argument can be made that refund rates are a measure of the level of consumer dissatisfaction, it is also possible that consumers simply fail to complain about low-cost calls they find unsatisfactory. NAAG noted at the public workshop conference that its law enforcement experience tends to show that the latter scenario is more typical.[291] Moreover, both NAAG and NACAA stated that the nominal cost exemption should not be set at the level where consumer refund requests rise, but rather at the level where providers can make a profit even though they include the preamble in their programs.[292] The Commission agrees. No evidence presented by any commenter showed that providers cannot make a profit, while still delivering the preamble, on calls that cost more than $2.00. In addition, it appears that Congress wanted to limit any exemption for nominal cost calls to services costing either $2.00 or $3.00.[293] Finally, the Commission agrees with the commenters who stated that consumers can be equally harmed by making a number of calls to a lower priced pay-per-call service as by one call to a higher priced service.[294] Accordingly, the Commission has decided to maintain the $2.00 threshold for nominal cost calls that will be exempt from the preamble requirements of § 308.5(a).

4. Section 308.5(d): Data Service Calls

In the NPR, the Commission asked whether the final Rule should exempt from the preamble requirements data services, *i.e.*, pay-per-call services that transmit data from one computer to another. The exemption would address situations where no individual is present to receive the information in the preamble.[295] A number of commenters in general supported such an exemption.[296] Bell Atlantic noted that such calls have not caused the same consumer problems as have voice messages. IIA states that facsimile machines may disconnect in the time it takes to complete a preamble. Moreover, the FCC recently determined that legitimate pay-per-call data services may not be able to place a verbal preamble on their programs, because no reasonable method exists.[297]

Based on this information, the Commission believes an exemption from the preamble requirements is appropriate for data services. Section 308.5(d) of the Rule sets forth this exemption, and states that it applies only when the entire call consists of the non-verbal transmission of information. In other words, this exemption applies to any call in which two machines (*i.e.*, computers, facsimile machines or the like) communicate, without the transmission of the spoken word. However, the exemption will not apply to an entertainment program providing music instead of the spoken word.

5. Section 308.5(e): Bypass Mechanism

The TDDRA gives the Commission discretion to exempt from the preamble requirements calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the preamble.[298] However, the Act further requires that any such bypass mechanism be disabled after the institution of any price increase for "a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change."[299] Accordingly, the proposed rule stated that providers of pay-per-call services that offer frequent callers the option of activating a bypass mechanism to avoid the preamble will not be in violation of § 308.5(a), provided that any such bypass mechanism is disabled for no less than 30 days after the institution of a price increase or a change in the nature of the service offered. In the NPR, the Commission asked, among other things, if this exemption was useful and appropriate.[300]

The limited number of commenters who responded to this proposal generally supported the exemption.[301] CA believed that the bypass mechanism should be disabled for 60 days after any "significant" change in the preamble, while PPI stated that the bypass should be disabled for only 15 days after a change in the program. The Commission continues to believe that 30 days is an appropriate period of time to give frequent callers adequate and sufficient notice of any increase in price or change in the nature of the service offered. Accordingly, the Commission is adopting the proposed language of this section in the final Rule.[302]

---

[286] 58 FR at 13383 (question 22).

[287] Tr. at 80–97.

[288] Comment 32 (MCI) at 12.

[289] Comment 37 (PPI) at 43 and unnumbered attachment.

[290] Comment 51 (USA Today) at 6–7.

[291] Tr. at 86–87.

[292] Tr. at 86–87, 92–93.

[293] *See* Senate Report at 13, 18. The FCC also limited the nominal cost exemption to the preamble requirements at $2.00 in both its original regulations of the pay-per-call industry, 47 CFR 64.711(a), and in its reconsideration of those regulations released in March 1993. FCC Reconsideration Order, ¶¶ 5–8 at 4–6.

[294] Comments 18 (Bell Atlantic) at addendum; 53 (CME) at 20–22.

[295] 58 FR at 13383 (question 24).

[296] Comments 18 (Bell Atlantic) at addendum; 31 (CA) at 10; 37 (PPI) at 45; 52 (IIA) at 10–12, 33–34; 62 (AT&T), Attachment A at i-ii.

[297] FCC Reconsideration Order, ¶ 11 at 7.

[298] 15 U.S.C. 5711(a)(5)(A).

[299] 15 U.S.C. 5711(a)(2)(E).

[300] 58 FR at 13383 (question 23).

[301] Comments 27 (NYDPS) at 2; 31 (CA) at 10; 37 (PPI) at 43–45. CA suggested that any bypass code should be vendor specific, so that casual callers cannot activate the bypass on programs for which they have not heard the preamble. The Commission does not believe such a specific requirement is necessary, since callers who use a bypass mechanism do so at their own risk, knowing they are skipping important disclosure information in the preamble.

[302] Some providers suggested that the bypass mechanism may be a vehicle for consumers to avoid pay-per-call service charges, if information is provided during the preamble period, since providers cannot bill for the time it takes to complete a preamble message. For example, if consumers call a pay-per-call service, immediately bypass the preamble, and obtain the information they seek within the normal preamble time, those consumers will not be billed for their calls, even though they obtained information from the programs. *See* comment 37 (PPI) at 18–19; Tr. at 101–02. While the Commission recognizes this problem exists, a provider is not required to use a bypass mechanism. Furthermore, while carriers currently may not be able to detect when a consumer has activated a bypass mechanism, they may develop such an ability in the future. Nothing in the Commission's Rule should be interpreted as prohibiting a provider from initiating billing as soon as a caller has bypassed the preamble.

6. Section 308.5(f): Billing Limitations

Congress required the Commission to prohibit providers of pay-per-call services from billing consumers in excess of the amounts described in the preamble, and from billing for services provided in violation of the rules prescribed by the Commission pursuant to the TDDRA.[303] The proposed rule incorporated this prohibition.

The Commission received only one comment concerning this provision. NAAG suggested that providers of pay-per-call services also be prohibited from billing consumers for any services provided in violation of any other law, regulation or rule, not simply the final Rule adopted by the Commission in this proceeding.[304] The Commission believes such a provision could be quite burdensome, because it would require billing entities, through their collection contracts with providers, to make evaluations of other Federal or state laws and regulations about which they may have no knowledge. Moreover, states have their own enforcement programs for these purposes. Accordingly, the Commission is adopting the language as proposed in the NPR.

7. Section 3085.(g): Stopping the Assessment of Time Based Charges

The TDDRA mandates regulations requiring providers of pay-per-call services to stop the assessment of time-based charges immediately upon disconnection by the caller.[305] The proposed rule adopted this provision verbatim. The Commission received no comments on this requirement, as proposed, and therefore is incorporating this provision into the final Rule. As stated in the NPR, the Commission recognizes that time-sensitive billing is accomplished in one-minute increments, and that any portion of a minute will be billed as a full time. Such a billing method will not be considered a violation of this provision.

8. Section 3085.(h): Prohibition on Services to Children

Pursuant to the TDDRA,[306] the proposed rule imposed a ban on pay-per-call services, except for bona fide educational services, directed to children under the age 21. In a manner similar to the ban on advertisements for pay-per-call services that are directed to children under 12, the proposed rule framed this ban in terms of a rebuttable presumption.

For the reasons set forth in part II.B.5, *supra*, concerning the prohibition on directing advertising of pay-per-call services to children under 12, the Commission is eliminating the use of a rebuttable presumption in this section of the final Rule as well. Instead, the Rule sets forth the criteria the Commission will use to determine whether a pay-per-call service is directed to children under the age of 12. These criteria include the following: (1) Whether the pay-per-call service is advertised in the manner set forth in §§ 308(e)(2) and (3) of the Rule; and (2) whether the pay-per-call service, regardless of when or where it is advertised, is directed to children under 12 in light of its subject matter, content, language, featured personality, characters, tone, message or the like.

9. Section 308.5(i): Prohibition Concerning Toll-Free Numbers

The TDDRA, in title II, prohibits the providing of pay-per-call services "through an 800 number or other telephone number advertised or widely understood to be toll free."[307] The proposed rule tracked this statutory language.[308] However, some commenters suggested the need to make it clear that the Rule prohibits any charge for a call to an 800 number, even if there is no actual connection or transfer to a 900 number.[309] Others suggested that the Rule explicitly prohibit collect call backs that result from a call to an 800 number.[310] It is clear from title I of the TDDRA that Congress intended to prohibit both of these uses of 800 telephone numbers.[311] Accordingly, in the final Rule, the provision concerning toll-free numbers, § 308.5(i), has been expanded to parallel the statutory provision on common carrier requirements, as well as the relevant FCC regulations restricting the use of 800 numbers.[312]

The prohibited uses of 800 and other toll-free numbers[313] include: (1) The calling party being assessed a charge for the call simply by virtue of completing the call; (2) calling party being connected to an access number for, or otherwise transferred to, pay-per-call service; (3) the calling party being charged for information conveyed during the call, unless there is a presubscription or comparable arrangement; and (4) the calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products.[314]

NAAG suggested that this provision also include a reference to local numbers.[315] However, the provision covers any telephone number that is "widely understood to be toll free." This would include total numbers where the consumer expects the call to be a tool-free one.

AIP suggested that this section should apply only to calls billed through the telephone company and not to service that are "billed privately."[316] The Commission does not believe that Congress intended to limit the prohibited conduct to services billed through the telephone bill.[317] Toll-free numbers can be used to provide pay-per-call services in only two situations. First, calls to toll-free telephone numbers can be billed pursuant to a presubscription arrangement that meets the criteria set forth in § 308.2(e). Second, calls to toll-free telephone numbers also can be billed to credit or charge card accounts, if authorized by the caller, since the definition of presubscription arrangement also includes calls billed in that manner. Apart from these two situations, charges

[303] 15 U.S.C. 5711(a)(2)(G). Title I of the Act imposes a similar requirement on common carriers that bill for pay-per-call services. The carrier must ensure that a telephone subscriber is not billed for any services that the carrier knows, or reasonably should know, were provided in violation of regulations issued by the FTC pursuant to title II of the Act. 47 U.S.C. 228(d)(1).

[304] Comment 42 (NAAG) at 16–17.

[305] 15 U.S.C. 5711(a)(2)(D).

[306] 15 U.S.C. 5711(a)(2)(C).

[307] 15 U.S.C. 5711(a)(2)(F).

[308] 58 FR at 13388.

[309] Comments 21 (NCL) at 17–18, 40 (NACAA) at 7; Tr. at 74, 76–78.

[310] Comments 55 (GTE) at 2–4, 61 (Sprint) at 13.

[311] 47 U.S.C. 288(c)(6).

[312] 47 CFR 64.1504.

[313] This provision also has been modified to prohibit any person, not just pay-per-call providers, from engaging in these practices. This is necessary to address a problem inherent in the definition of "pay-per-call services." That definition, as set forth in title I of the statute, 47 U.S.C. 228(i), and incorporated into this Rule, § 308.2(c), includes a provision that such services are accessed through use of a 900 telephone number (or other prefix or area code designated by the FCC). Therefore, an information provider that is charging customers for information conveyed pursuant to a call to an 800 telephone number is not, by definition, a "provider of pay-per-call services." The problem is resolved by prohibiting any person from engaging in such conduct.

[314] Summit's comment describes a system for providing audio information via calls to an 800 number and collect call backs. As described, the system affords the consumer two opportunities to indicate positive acceptance of a collect return call. Summit requests that the FTC include in its Rule provisions governing this type of service. However, it is clear that the TDDRA prohibits this type of service. *See* 47 U.S.C. 228(c)(6)(D). After the effective date of this Rule, and the parallel FCC regulations, the use of 800 numbers to generate collect call backs will no longer be permitted.

[315] Comment 42 (NAAG), Attachment 1 at 6.

[316] Comment 15 (AIP) at 11–12.

[317] Under 15 U.S.C. 5711(a)(4), Congress authorized the Commission to include provisions necessary to prevent evasion of its regulations through the use of alternative billing procedures.

for calls to 800, and other toll-free numbers, are prohibited.

10. Section 308.5(j): Disclosure Requirements for Billing Statements

The TDDRA requires providers of pay-per-call services to ensure that any billing statements for their pay-per-call service charges: (1) Display those charges in a part of the consumer's bill that is identified as not being related to local and long distance telephone charges; and (2) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time and duration of the call.[318] The proposed rule incorporated these provisions. In addition, the NPR asked whether the provider's name, address or city and state should be required in the billing statements discussed in this section of the proposed rule.[319]

One commenter stated that the requirement in the proposed rule that pay-per-call service charges be displayed in a separate part of the consumer's telephone bill was unnecessary.[320] However, this requirement is mandated by the TDDRA and cannot be deleted.[321]

Another commenter stated that the separate identification of charges for pay-per-call services is appropriate, but that the Commission should not require these charges to be segregated on a separate page of the consumer's bill, since any additional pages in a telephone bill increases costs to the billing entities and ultimately to the providers.[322] The Commission did not intend that charges for pay-per-call services must be printed on a separate page of the consumer's telephone bill. Rather, pay-per-call charges simply must be displayed in *a portion* of the consumer's bill that is identified as not being related to local and long distance telephone charges. The method and manner used to segregate these charges, and to identify them as not being related to other telephone charges, is left to the discretion of the billing entity. The Commission believes this section of the proposed rule provides the proper degree of flexibility to the industry, while creating the necessary separation in consumers' telephone bills between pay-per-call charges and local and long distance telephone charges. Accordingly, the Commission is adopting this provision as proposed.

The proposed rule also required all pay-per-call service charges on a consumer's bill to specify the type of service, the amount of the charge, and the date, time and duration of the call. One commenter noted a potential problem with this provision. According to US West, when a pay-per-call service is billed on a flat-rate basis, the billing entity may not receive information on the duration of the call, since that information is irrelevant to the amount of the charge for the call.[323] To address this concern, the final Rule, at § 308.5(j)(2), includes a provision that the duration of the call need only be specified for calls billed on a time-sensitive basis.

In response to the NPR question whether the provider's name or address should be required on a consumer's billing statement,[324] CA and NACAA both stated that such a provision would aid consumers and enforcement agencies in determining the identity of the provider.[325] Many other commenters opposed this proposal, however. Ameritech stated that the inclusion of additional information about the provider on a consumer's bill would increase both the size and complexity of the bill, which ultimately may produce a negative consumer reaction.[326] BellSouth and US West both stated that it would be difficult for the local exchange carrier to keep a current database of this information.[327] At the public workshop conference, both USTA and ICN noted that each additional line of information placed on a consumer's telephone bill increases the costs to produce that bill.[328] Finally, a number of commenters stated that it is not necessary to present this information on the consumer's telephone bill, since consumers are able to call a toll-free telephone number to obtain this information.[329]

After considering the comments on this matter, the Commission has determined that the costs to providers and billing entities of having this information printed on a consumer's telephone bill outweighs the benefits of such a requirement to consumers and law enforcement agencies. This is especially true since billing entities are required to provide consumers with a toll-free telephone number to obtain additional information about any pay-per-call charges.

Title I of the TDDRA requires common carriers to disclose on a billing statement a local or toll-free telephone number where consumers can obtain answers to their questions and information on their rights and obligations with regard to their use of pay-per-call services, and can obtain the name and mailing address of any provider of pay-per-call services offered by that carrier.[330] Given this carrier requirement, and the importance of such information to consumers, the Commission has decided to add a similar provision to the final Rule. Thus; providers of pay-per-call services shall endure that any billing statement for such provider's charges shall display the local or toll-free telephone number discussed above.[331] No other requirements have been added to this section of the final Rule.

11. Section 308.5(k): Refunds to Consumers

Pursuant to the TDDRA,[332] the proposed rule stated that the provider of pay-per-call services shall be liable for refunds to consumers who have been billed, and have paid charges, for pay-per-call services found to have violated any provision of the final Rule or any other Federal rule or law.[333] The Commission received only two comments concerning this section. First, USTA stated that this provision should permit credits to consumers, in addition to requiring refunds.[334] According to USTA, local telephone companies, who deal with their customers on a recurring monthly basis, prefer to issue credits on a monthly bill rather than refunds when a customer inquiry is resolved in the customer's favor. USTA stated that the final Rule should not inadvertently prevent this. The Commission agrees. Actual cash refunds to consumers may not be necessary, when pay-per-call programs are found to have violated Federal law, if in fact consumer redress can be distributed more quickly and with less expense by way of credits on consumers' telephone bills. The final

[318] 15 U.S.C. 5711(a)(2)(H). Title I of the Act imposes the same requirements on common carriers that offer billing and collection services to pay-per-call service providers. 47 U.S.C. 228(d)(4).

[319] 58 FR at 13382 (question 18.b).

[320] Comment 22 (MegaNews) at 5.

[321] *See* 15 U.S.C. 5711(a)(2)(H)(i).

[322] Comment 50 (BellSouth) at 6. *See also* comment 55 (GTE) at 4–5 (the section should only require that the billing statement "display the pay-per-call service charges in such a way as to clearly distinguish them from the consumer's local and long distance telephone charges").

[323] Comment 57 (US West) at 11–12.

[324] 58 FR at 13382 (question 18.b).

[325] Comments 31 (CA) at 9; 40 (NACAA) at 9.

[326] Comment 29 (Ameritech) at 2–3.

[327] Comments 50 (BellSouth) at 7; 57 (US West) at 14–15.

[328] Tr. at 231–32, 245–47.

[329] Comments 13 (NTCA) at 5–6; 29 (Ameritech) at 2–3; 50 (BellSouth) at 7; 57 (US West) at 14–15.

[330] 47 U.S.C. 228(d)(4)(C).

[331] Such a provision is also important to ensure that third party billers, not covered by the FCC rules governing carriers, also disclose on their bills for pay-per-call services this local or toll-free telephone number.

[332] 15 U.S.C. 5711(a)(2)(I).

[333] 58 FR at 13388.

[334] Comment 16 (USTA) at 13.

Rule has been modified to permit such credits.

NAAG submitted the second comment concerning this section of the proposed rule. NAAG recommended that providers should be liable for refunds to consumers for programs found to have violated any law, regulation or rule, whether state or Federal.[335] The Commission believes that expanding this provision to cover any state law, regulation or rule would in effect require the Commission to expend considerable resources monitoring and enforcing the laws of all fifty states. Moreover, states can exercise their independent authority in this area. Accordingly, with the exception of the minor change discussed above, this section of the proposed rule remains unchanged.

12. Section 308.5(1): Service Bureau Liability

In the NPR, the Commission asked whether service bureaus should be required to monitor all pay-per-call services that operate on their equipment, and be held liable for some or all violations of the Rule by those services.[336] Two commenters responded negatively. PPI stated that such a provision would be a "discriminating and unwarranted intrusion on this industry,"[337] while Pilgrim maintained that liability should be placed only on the party who has responsibility or control over the activity.[338] on the other hand, a number of commenters suggested that such liability is appropriate. CA claimed that providers have hidden behind service bureaus in the past, making if difficult for consumers to resolve complaints.[339] NACAA argued that service bureau liability is appropriate, if the company knew or should have known of the violations, since it is providing the necessary equipment for the violation to occur.[340] Southwestern agreed, for the following reasons: A service bureau is often the only party with direct contact to the provider; it profits from the pay-per-call service; and it can move the fastest to effect any necessary changes in a program found to be violating the Rule.[341] Finally, USPS stated that since a service bureau profits from pay-per-call services, it should be liable for violations and be required to forfeit its income from any promotion found to violate the Rule.[342]

Based on the comments, the Commission believes that some degree of service bureau liability is warranted. Service bureaus provide the equipment, and often numerous other forms of assistance, to providers of pay-per-call services. Without service bureau assistance, many providers would be unable to distribute their programs. Given service bureaus' degree of involvement in the delivery of pay-per-call services, as well as the profits they make from these services, the Commission concludes that they should be held liable for violations of the Rule by their client providers.[343]

At the same time, however, the Commission has determined that service bureau liability should not be absolute. The Commission understands that it may be impossible for a service bureau to monitor constantly all programs operating on its equipment, and that providers may change programs without the knowledge or consent of the service bureau. Accordingly, the final Rule states that a service bureau shall be liable for violations of the Rule by pay-per-call services using its call processing facilities only where the service bureau either knew or should have known of the violation.

Where service bureaus assist pay-per-call providers in the creation of pay-per-call programs and advertising for such programs, they likely will be in a position to know whether there are violations. Similarly, if a service bureau receives a number of consumer complaints, or information that a program is generating a high rate of billing error notices, the service bureau would be alerted to the fact that violations may be occurring.

13. Other Questions

The NPR posed a series of additional questions concerning the operation of pay-per-call services. For example, the TDDRA states that the Commission shall consider requiring providers of pay-per-call services to automatically disconnect a call after one full cycle of the programs.[344] In the NPR, the Commission asked whether the final Rule should require such a disconnection.[345] NACAA believed that such a requirement would be appropriate, since consumers can redial if they want to hear a program again.[346] On the other hand, Bell Atlantic argued that such a provision would not be in the public interest, since many callers may want to hear a program a second time.[347] The Commission agrees with the latter view. Consumers will be told the cost of the program in both the advertisement and the preamble. With this knowledge, the Commission believes consumers will stay on the line to hear a program a second time only if it contains information they want to hear again. Moreover, no commenter demonstrated any consumer harm caused by the absence of such a requirement. The Commission therefore has decided not to impose such a provision in the final Rule.

The TDDRA also states that the Commission should consider a regulation requiring providers of pay-per-call services to include a beep tone or other appropriate signal during a live interactive program so that callers will be alerted to the passage of time.[348] The Commission sought comment in the NPR whether such a provision should be promulgated.[349]

A number of commenters stated that such a tone should be required in order to prevent consumers from losing track of time during these calls.[350] On the other hand, PPI stated that such a tone is intrusive and interferes with the listener's enjoyment of the program.[351] NII stated that, as a small provider, it does not have the technology available to include a recurring beep tone during its live programs.[352] In addition, at the public workshop conference, other providers discussed how any tone requirement was both awkward and difficult to produce during live conversations.[353]

---

[335] Comment 42 (NAAG) at 17.

[336] 58 FR at 13383 (question 29).

[337] Comment 37 (PPI) at 47.

[338] Comment 60 (Pilgrim) at 17.

[339] Comment 31 (CA) at 10–11.

[340] Comment 40 (NACAA) at 10.

[341] Comment 44 (Southwestern) at 3.

[342] Comment 59 (USPS) at 8–9.

[343] FCC regulations enacted pursuant to the TDDRA mandate that common carriers assigning numbers for pay-per-call services must require, by contract or tariff, that the provider of the services comply with the FTC regulations enacted pursuant to titles II and III of the Act. 47 U.S.C. 228(c)(1); 47 CFR 64.1502. In addition, such carriers must specify, by contract or tariff, that programs not in compliance with FTC regulations will be terminated following notice to the information provider. 47 U.S.C. 228(c)(2); 47 CFR 64.1503. In those instances where the common carrier contracts directly with a service bureau, that in turn subcontracts with individual pay-per-call providers, it appears that the carrier will have to require the service bureau to require compliance with the FTC rule by those information providers using its call processing facilities.

[344] 15 U.S.C. 5711(a)(6)(A).

[345] 58 FR at 13383 (question 25).

[346] Comment 40 (NACCA) at 9.

[347] Comment 18 (Bell Atlantic) at addendum. *See also* comment 44 (Southwestern) at 1–2.

[348] 15 U.S.C. 5711(a)(6)(B).

[349] 58 FR at 13383 (question 26).

[350] Comments 18 (Bell Atlantic) at addendum 2; 31 (CA) at 10; 40 (NACCA) at 9; 59 (USPS) at 9.

[351] Comment 37 (PPI) at 46.

[352] Comment 73 (NII) at 5.

[353] Tr. at 170, 172. This discussion at the public workshop conference concerned the requirement that a tone be used to signal the end of the preamble, but it is relevant to this proposal as well.

The Commission does not believe the potential consumer benefit from a tone signaling the passage of time during the course of a live conversation with a pay-per-call service is sufficient to justify this requirement, given the difficulties involved in generating tones during a live conversation and the potential cost involved. Accordingly, the Commission has decided not to include such a requirement in the final Rule.[354]

In order to address the potential problem of billing for pay-per-call services through the use of fraudulent billing tapes, the Commission asked in the NPR whether the final Rule should include a requirement that all billing for pay-per-call services be based on the call detail records provided by the certified carrier of the call.[355] A number of commenters suggested this would be a good idea.[356] However, the commenters presented little or no information concerning the costs of such a requirement or actual experiences with fraudulent billing tapes. Given this lack of evidence, the Commission does not believe the record supports the imposition of such a requirement.

Finally, the NPR asked if the Rule should include protection against the unauthorized use of a consumer's telephone to call pay-per-call services. The Commission suggested, for example, requiring either an access code or a PIN number which consumers must dial before being able to access pay-per-call services.[357] Individual providers can require such a PIN number to access their individual programs. However, a large number of commenters stated that a system-wide access code or PIN number is currently unavailable, would be extremely costly to implement, and would stifle the growth of this industry by inhibiting the occasional caller from accessing pay-per-call services.[358] Based on this uniform opposition, the Commission will not impose such a requirement in the final Rule.

E. Section 308.6: Access to Information

The TDDRA authorizes the Commission to require common carriers providing telephone services to pay-per-call providers to make the following information available to the Commission: "Any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services."[359] Section 308.6 of the Rule incorporates this requirement as set forth in the statute.[360]

In the NPR, the Commission asked whether the Rule should include a list of the types of records that common carriers must maintain for this purpose, and, if so, what types of information should be included in the list and how long it should be maintained.[361] Comments were mixed on the recordkeeping issue. NTCA, Bell Atlantic, Ameritech, MCI, AT&T, NAIS, and Sprint asserted that no new recordkeeping requirement should be imposed.[362] As noted by some of these commenters, the FCC already requires that carriers maintain call detail records for 18 months.[363] US West suggested that the FTC not list required records, but give examples of the kind of information in which it is interested.[364] On the other hand, NACAA, NAAG, USPS, and Pilgrim believed the FTC Rule should include a recordkeeping requirement.[365] NAAG proposed that common carriers be required to compile records regarding the number of complaints and credits issued against pay-per-call providers. NACAA suggested that carriers be required to maintain records of arrangements for pay-per-call services for as long as the applicable statute of limitations.[366] NACAA further proposed that the Rule require these records be made available to state officials who will share enforcement responsibility. USPS also advocated that the Rule allow for access to records by other Federal and state agencies and proposed a three-year recordkeeping requirement.

The Commission has determined not to impose a specific recordkeeping requirement in the Rule. Common carriers are already subject to recordkeeping requirements imposed by the FCC. Discussion at the public workshop conference showed, in addition, that carriers have recordkeeping systems in place that in some cases may exceed Federal legal requirements.[367] There is no clear basis, at the present time, to warrant a conclusion that existing requirements and recordkeeping systems maintained by the carriers are inadequate for purposes of enforcement of this Rule. Finally, the Commission does not believe that the TDDRA authorizes it to require the carriers to make information available to other law enforcement agencies. However, the Commission notes that its Rules of Practice make provision, under certain circumstances, for the sharing of information with other Federal and state law enforcement agencies.[368]

F. Section 308.7: Billing and Collection for Pay-Per-Call Services

1. Section 308.7(a): Definitions

The proposed rule defined the following terms to apply to the billing and collection of pay-per-call services: Billing entity; billing error; customer; preexisting agreement; providing carrier; telephone-billed purchase; and vendor.[369] The final Rule changes only the definition of "providing carrier."

(a) Section 308.7(a)(1): Definition of "Billing Entity"

NACAA commented that the definition of "billing entity" should expressly include third-party billers. The NPR did in fact state explicitly that the term "billing entity" applies to third-party billers.[370] The Commission believes that by expressly stating that the term applies to "*any* person who transmits a billing statement to a customer for a telephone-billed purchase or *any* person who assumes responsibility for receiving and responding to billing error complaints or inquiries" (emphasis added), the definition is sufficiently broad to leave

[354] In contrast, as previously discussed in part II.D.1.c., *infra*, the Commission believes that the consumer benefits of a signal or tone indicating the end of the preamble are significant, justifying such a requirement at that time.

[355] 48 FR at 13383 (question 27).

[356] Comments 23 (VRS) at 7–8; 31 (CA) at 10; 44 (Southwestern) at 2; 50 (BellSouth) at 9; 59 (USPS) at 8.

[357] 58 FR at 13383 (question 30).

[358] Comments 16 (USTA) at 14; 23 (VRS) at 8–9; 29 (Ameritech) at 4; 37 (PPI) at 48; 40 (NACAA) at 10; 44 (Southwestern) at 4; 50 (BellSouth) at 8; 52 (IIA) at 34- 35; 62 (AT&T), Attachment A at ii; 81 (Sprint) at 8–9.

[359] 15 U.S.C. 5711(a)(3).

[360] In addition, title I of the Act lists certain categories of information that common carriers must make available on request to Federal and state agencies and other interested persons. These include: (A) A list of the telephone numbers for each of the pay-per-call services carried; (B) a short description of each such service; (C) a statement of the total cost or the cost per minute and any other fees for each such service; (D) a statement of the pay-per-call service's name, business address, and business telephone number; and (E) such other information as the FCC considers necessary for the enforcement of its regulations and other applicable Federal statutes and regulations.

[361] 58 FR at 13383 (question 32).

[362] Comments 13 (NTCA) at 7–8; 18 (Bell Atlantic) at 6–7; 29 (Ameritech) at 5; 32 (MCI) at 5; 62 (AT&T), Attachment A at iii; 63 (NAIS) at 40; 81 (Sprint) at 9–10.

[363] 47 CFR 42.6.

[364] Comment 57 (US West) at 16–17.

[365] Comments 40 (NACAA) at 11; 42 (NAAG) at 33; 59 (USPS) at 9; 60 (Pilgrim) at 17–18.

[366] The statute of limitations in civil penalty actions is five years. 28 U.S.C. 2462.

[367] Tr. at 462–87. USTA pointed out that a number of states have record retention requirements more extensive than those imposed by the FCC. Tr. at 468.

[368] *See, e.g.*, 16 CFR 4.11(c).

[369] 58 FR at 13388.

[370] 58 FR at 13376.

no doubt that it applies to third-party billers. Moreover, as stated in the NPR, the term would also apply to any person who assumes responsibility for receiving or responding to billing error complaints, even if that person does not send billing statements to customers.[371]

(b) Section 308.7(a)(2): Definition of "Billing Error"

"Billing error" is defined by the TDDRA to encompass a number of situations that result in the reflection of a mistake or inaccuracy on a billing statement for a telephone-billed purchase about which a customer might complain or seek clarification.[372] The billing errors described in the Act closely resemble those described in the Fair Credit Billing Act's definition of "billing error."[373]

The proposed rule expanded upon the Act's definition of "billing error" in § 308.7(a)(2)(i), by including in the definition of billing error "a reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer *who was billed for the purchase*" (emphasis added). The Commission sought comment as to whether this definition should be changed to permit a customer to allege as a "billing error" a telephone-billed purchase made by someone other than the customer using the customer's telephone without permission, *i.e.*, an "unauthorized charge."[374] NACAA answered in the affirmative, commenting that parents must be able to dispute calls made by children without their consent.[375] NAAG agreed, insisting that the billing and collection procedure must permit customers to present all claims they might have.[376] CA remarked that the right to challenge unauthorized charges is accorded to consumers under the Fair Credit Billing Act ("FCBA"); hence, they should have a similar right under this Rule.[377]

Industry members generally opposed the idea, taking the position that a customer is responsible for all calls placed from the customer's telephone, regardless of whether the customer knew of or approved the call.[378] Bell Atlantic commented that this has always been the rule in the telecommunications industry and that this principle has been affirmed by the courts.[379] Sprint observed that most common carriers' tariffs hold the customer responsible for the payment of all charges for telephone service.[380] ICN pointed out that the concern about calls made by minors should be addressed by the TDDRA's prohibition on pay-per-call services (other than bona fide educational services) directed to children under 12 and the disclosures required for programs directed primarily to persons under 18.[381]

Several commenters supported continuance of the current industry practice, which, generally, is to allow the customer a one-time credit for a pay-per-call charge that the customer claims he or she did not make or authorize, and then to hold the customer responsible for any subsequent unauthorized charges or to impose mandatory blocking.[382]

None of the comments shed any light on how a billing entity might determine whether a customer had in fact made or authorized a telephone-billed purchase for which the customer denied any responsibility. MCI remarked that there is no way for the billing entity to prove that a call was or was not authorized; thus, it is pointless to permit the customer to assert such a claim as a "billing error" when the billing entity has no way of investigating the truth of that assertion.[383] ICN commented that the inability to evaluate such claims might cause local exchange carriers to give the customer a credit anytime such a claim was raised, forcing the information provider to bear the loss.[384] This could lead to consumer abuse of the privilege.

The Commission finds these arguments persuasive. Furthermore, Congress has directed the Commission to consider the extent to which these regulations should diverge from the requirements of the TILA and FCBA to be cost effective to billing entities, as well as to protect consumers.[385] Therefore, the Commission has decided against changing the definition of "billing error" to include claims of unauthorized charges. This will not preclude billing entities from continuing to grant customers a one-time forgiveness of such charges, nor will it preclude them from investigating these claims. They will not, however, have to follow the billing review procedures prescribed by the Rule in doing so.

AT&T commented that the definition of "billing error" is overbroad to the extent it includes "a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof," § 308.7(a)(2)(ii). It expressed concern that to include such requests in the definition might trigger unnecessary notification requirements when the customer is merely seeking clarification and not actually disputing the charge.[386]

This provision is mandated by the Act,[387] which directs the Commission to promulgate rules under this section substantially similar to the requirements imposed under the TILA and the FCBA.[388] The Official Staff Commentary on Regulation Z[389] clarifies that a request for documentation, such as for receipts or sales slips, unaccompanied by an allegation of error or a request for additional clarification, does not trigger the error-resolution procedures of the FCBA.[390] Furthermore, a request for additional clarification need not trigger the notification requirements under this Rule if the customer, after initially inquiring about a telephone-billed purchase, agrees that the billing statement was correct or agrees to withdraw voluntarily the billing error notice.[391]

Several commenters recommended that the definition of "billing error" be expanded to include specifically the following: (1) Charges for calls in which the vendor failed to comply with any of the advertising or pay-per-call standards of this Rule; and (2) charges for calls involving any unfair, misleading, or

[371] *Id.*

[372] 15 U.S.C. 5724(2).

[373] 15 U.S.C. 1666(b).

[374] 58 FR at 13383 (question 34).

[375] Comment 40 (NACAA) at 12.

[376] Tr. at 190.

[377] Comment 31 (CA) at 11. In fact, it is not the FCBA but Regulation Z, the implementing regulation of the Truth in Lending Act ("TILA") and the FCBA, promulgated by the Board of Governors of the Federal Reserve System, which gives consumers this right. 12 CFR 226.13(a)(1). The credit card situation is clearly distinguishable from one involving a pay-per-call service. The former involves a credit card and a credit card number that can be lost or stolen. Moreover, the cardholder's signature is generally required, which would allow for subsequent verification of the cardholder's identity. A consumer's telephone, however, is usually only accessible to those who have been granted access to the consumer's residence, and no identification code peculiar to the consumer is needed to initiate a call from that telephone. Thus, the Board had a logical reason for permitting consumers to allege unauthorized credit card charges as "billing errors," which does not appear to apply to pay-per-call services.

[378] *See, e.g.*, comments 13 (NTCA) at 4–5; 16 (USTA) at 15; 18 (Bell Atlantic), addendum at 2–3; 81 (Sprint) at 11.

[379] Comment 18 (Bell Atlantic), addendum at 2–3.

[380] Comment 81 (Sprint) at 11.

[381] Tr. at 206.

[382] Comments 31 (CA) at 11; 37 (PPI) at 50; 38 (CAPUC) at 85–86; Tr. at 193–94, 196–98, 200, 203.

[383] Tr. at 203.

[384] Tr. at 206.

[385] 15 U.S.C. 5721(d)(10).

[386] Comment 62 (AT&T) at 5.

[387] 15 U.S.C. 5724(2)(B).

[388] 15 U.S.C. 5721(a)(2).

[389] 12 CFR part 226, Supplement I.

[390] 12 CFR part 226, Supplement I, Comment 226.13(a)(6)–1.

[391] Section 308.7(e) of the Rule.

deceptive acts or practices under Federal or state law.[392] NARUC and NAAG maintain that this expansion of the definition is necessary to ensure continuance of the general practices currently followed by most local telephone companies and inter-exchange carriers for handling pay-per-call billing disputes.[393]

Industry members objected to an allegation of a law violation being considered a "billing error," contending that it would place an unreasonable administrative burden on billing entities if they had to follow the billing review procedures set forth in the Rule every time a customer lodged such a claim.[394] Moreover, they argued, it would force billing entities to become policemen, essentially performing the task of the regulatory enforcement agencies, a function that they are not equipped to perform.[395] IISC remarked that such a provision would suggest to consumers that they can be the initial arbiter of what is false or deceptive or misleading.[396]

The Commission interprets § 308.7(a)(2)(iii) of the Rule to include as a "billing error" any allegation by a customer that representations made by a vendor or an agent of the vendor, whether through advertising or otherwise, were inconsistent with the product or service delivered to the customer or what the customer expected to receive. However, the Commission declines to expand the definition to apply expressly to any violation of this Rule, or any other state or Federal law or regulation. To expand the definition in this manner could be quite burdensome, requiring billing entities to evaluate other Federal or state laws and regulations about which they may have no knowledge.

The Commission also seeks to clarify that a subjective claim of dissatisfaction with the quality or value of a product or service received is not a "billing error" under § 308.7(a)(2). However, an objective assertion by the customer that the quality or value of the product or service received was less than or substantially different from that represented by the provider might constitute a "billing error" under § 308.7(a)(2)(iii) as a telephone-billed purchase "not provided to the customer in accordance with the stated terms of the transaction."

Finally, the proposed rule added a section to the TDDRA definition of "billing error," § 308.7(a)(2)(viii). In this section, a billing error is defined to include the failure to display charges for a telephone-billed purchase on a billing statement in the manner prescribed by § 308.5(j) of the Rule, *i.e.*, by segregating them from other telephone charges and specifying the type of service, the amount of the charge, and the date, time, and, for calls billed on a time-sensitive basis, duration of the call. This section is included in the final Rule as proposed.

(c) Section 308.7(a)(3): Definition of "Customer"

In the proposed rule, the Commission broadened the TDDRA's definition of "customer"[397] to cover any person who is billed for a telephone-billed purchase, whether or not that person placed the call or received the goods or services in question. This would give these persons the billing error rights accorded to other "customers" under the statute. The Commission has decided to adopt this definition as proposed.

(d) Section 308.7(a)(4): Definition of "Preexisting Agreement"

The Commission sought comment as to whether the term "preexisting agreement," as used in section 304(1)(A) of the TDDRA[398] should have the same meaning as "presubscription or comparable arrangement," defined in § 308.2(e) of the proposed rule.[399] PPI commented that a reasonable person would understand the two terms to have the same meaning.[400] MCI replied that the two terms appear to be used interchangeably in the Act, and that there is nothing in the Act that would require these terms to have different meanings. To avoid the confusion that could arise if the terms were given different meanings, MCI urged the Commission to find that the term "preexisting agreement" means "presubscription or comparable arrangement," as defined by the FCC.[401]

The Commission agrees that the terms "preexisting agreement" and "presubscription or comparable arrangement," as used in the TDDRA, are synonymous and, thus, has tied the definition of the former term to the latter. As explained in part II.A.3, *supra*, the definition of "presubscription or comparable arrangement," in § 308.2(e) of this Rule, is identical to the FCC's definition of that term.

(e) Section 308.7(a)(5): Definition of "Providing Carrier"

The proposed rule defined a "providing carrier" as "a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a *billing error*." [402] (Emphasis added). PPI commented that by changing the term "billing error complaint" (the term used in the Act's definition) to "billing error," the Commission made "a slight and subtle difference, but one which could be interpreted to assume each complaint is correct."[403] The proposed rule used the broader term "billing error" rather than "billing error complaint" to clarify that a "billing error" need not involve a "complaint," *i.e.*, an expression of customer dissatisfaction. An inquiry by the customer may also be a "billing error" (*e.g.*, a customer request for additional clarification regarding a pay-per-call charge appearing on the customer's billing statement).[404]

Nonetheless, to avoid possible confusion, the Commission has decided to change the definition of "providing carrier" to refer instead to "a telephone-billed purchase that is the subject of a billing error complaint or inquiry." This also is consistent with the use of the phrase "billing error complaints or inquiries" in the definition of "billing entity," § 308.7(a)(1).

(f) Section 308.7(a)(6): Definition of "Telephone—Billed Purchase"

The term "telephone-billed purchase" is defined in the final Rule as it is in the TDDRA.[405] It applies to any purchase involving the use of a telephone that is consummated solely as a result of the completion of the call or the subsequent entry of a number or access code using a rotary or touch tone telephone, or by comparable action. The term does not apply to any purchase by a caller pursuant to a preexisting agreement (such as presubscription) with the vendor, nor to any service that the FCC determines by rule is closely related to the provision of telephone service and is subject to billing dispute resolution procedures required by Federal or state law. Also exempt are sales transactions that are otherwise subject to billing dispute resolution procedures required

[392] Comments 10 (NARUC) at 7; 40 (NACAA) at 13; 42 (NAAG) at 18–26.

[393] Comments 10 (NARUC) at 7; 42 (NAAG) at 18.

[394] Tr. at 269, 278.

[395] Tr. at 269, 275–76, 280.

[396] Tr. at 277.

[397] 15 U.S.C. 5724(6).

[398] 15 U.S.C. 5724(1)(A).

[399] 58 FR at 13383 (question 33).

[400] Comment 37 (PPI) at 50.

[401] Comment 32 (MCI) at 2–3.

[402] 58 FR at 13388.

[403] Comment 37 (PPI) at 22.

[404] See the discussion of § 308.7(a)(2)(ii), above.

[405] 15 U.S.C. 5724(1).

by Federal law (*e.g.*, credit card purchases under the FCBA).

(g) Section 308.7(a)(7): Definition of "Vendor"

"Vendor" is defined as it is in the TDDRA.[406] The term applies to the person who sells the goods or services that are the subject of the telephone/billed purchase.

2. Section 308.7(b): Initiation of Billing Review

Section 308.7(b) describes how a customer shall initiate a billing review of a telephone-billed purchase. In general, a customer must provide the billing entity with notice of a billing error within 60 days after the billing entity sends the customer the billing statement on which the questioned charge first appears.[407] Comments submitted by NACAA, NAAG and Sprint suggest that there are certain situations in which a customer might need more than 60 days to assert a billing error claim. NACAA commented that because some goods or services are not provided immediately when calls are made (such as prizes and vouchers for future travel), it sometimes is not apparent to the customer that there is a problem until after 60 days have elapsed.[408] NAAG recommended that the time frame in which to initiate a billing review be expanded to 90 days, and that the Rule clarify that "if a 'service' includes the subsequent delivery of a prize, award or other product, that a consumer has 90 days to complain from the date that the goods or services arrive or are supposed to arrive."[409]

Sprint stated that situations in which the customer might need more than 60 days are rare. However, it commented that a longer period of time might be justified where customers can prove they were told by the vendor to allow more than 60 days for delivery of the specific goods or services.[410]

The Commission believes the situations cited by NACAA, NAAG and Sprint are covered by the Rule.[411] Where the customer's "billing error" involves a charge billed by a pay-per-call service for goods or services that were delivered after the customers received the billing statement, the 60-day notification period does not begin to run until the goods or services are delivered. This includes any gift or award that was promised to the customer for entering into the transaction. If the complete goods or services bargained for are never delivered, the 60-day period begins to run on the date the customer was told or led to believe the goods or services were to be delivered, if that date is later than the date the billing statement was transmitted to the customer. In either case, the customer would have at least 60 days from the date the customer was on notice of the problem in which to assert the billing error.

The Rule does not require a customer to give written notice to initiate a billing review. The NPR solicited comment as to whether written notification should be required.[412] The majority of commenters were not in favor of such a requirement, stating that consumers should have the option to call or write.[413] NCL's comment was representative of this group, contending that to require written notification would be unnecessarily restrictive, as most telephone subscribers are accustomed to dealing with their telephone companies over the phone.[414] PPI suggested that the administrative cost attendant to requiring written notification would outweigh any possible benefits.[415]

The telephone companies were the most adamant in their opposition to requiring written notification.[416] USTA commented that the current procedures used by most local telephone companies do not require their customers to reduce billing complaints to writing. As a result, consumers are able to receive prompt responses to their complaints or inquiries. USTA maintained that these procedures have been shown to work and, thus, should be allowed to continue.[417]

A number of information providers supported requiring customers to submit written notification. Fun Lines expressed concern that the proposed billing error resolution procedures would serve as an incentive to billing entities to credit customers' accounts for disputed amounts and charge the amounts back to the vendors, which would then foster consumer abuse of the dispute resolution procedures. To dissuade such abuse, Fun Lines proposed that written notice be required to initiate a billing review.[418] Another organization of information providers, AIP, commented that written notice of a billing error should be required "for clarity of record-keeping."[419]

Two commenters offered proposals where the written notice requirement would be triggered only if the billing error dispute exceeded a defined threshold. ICN observed that requiring written notice to initiate a billing review might be warranted where the disputed charge exceeds a certain dollar amount, such as $75.[420] VRS, a third-party biller, proposed a two-stage error resolution process: in the initial stage, oral notice would be sufficient to assert a billing error; if the initial call did not result in resolution of the dispute, the customer would then have to submit written notification to continue the dispute resolution process.[421]

Because of the breadth of the opposition to requiring written notice and the value to consumers in being able to communicate billing error complaints and inquiries quickly and easily, the Commission has decided against requiring written notice to initiate a billing review. Thus, the final Rule permits billing entities to decide for themselves whether to require written notice.

3. Section 308.7(c): Disclosure of the Method of Providing Notice

Section 308.7(c) remains unchanged. It requires the billing entity to disclose on or with each billing statement the method, or methods (*e.g.*, by letter or by telephone), by which the customer may provide notice of a billing error. If the billing entity allows oral notice to be given, it must disclose the presumption that applies if a dispute arises concerning the sufficiency of the customer's oral communication to initiate a billing review.

4. Section 308.7(d): Response to Customer Notice

Section 308.7(d) explains the procedure a billing entity must follow to respond to a customer's billing error notice. The proposed rule, § 308.7(d)(1), required the billing entity to acknowledge the customer's notice *in*

[406] 15 U.S.C. 5724(5).

[407] The 60-day limitation to initiate a billing review shall have no effect on the time in which a person may file a complaint with the FCC against carriers for the recovery of damages or overcharges under the Federal Communications Act, 47 U.S.C. 415.

[408] Comment 40 (NACAA) at 13.

[409] Comment 42 (NAAG) at 30–31.

[410] Comment 81 (Sprint) at 14.

[411] This issue was addressed in footnote 2 of the proposed rule. 58 FR at 13388. To emphasize the point, The Commission has incorporated that footnote into the body of the text of § 308.7(b) of the final Rule.

[412] 58 FR at 13384 (question 35.a).

[413] *See, e.g.*, Comments 21 (NCL) at 19; 31 (CA) at 11; 37 (PPI) at 51; 40 (NACAA) at 13; 81 (Sprint) 12.

[414] Comment 21 (NCL) at 19.

[415] Comment 37 (PPI) at 51.

[416] Comments 16 (USTA) at 7; 18 (Bell Atlantic) at 5; 29 (Ameritech) at 4–5; 57 (US West) at 8; 62 (AT&T), Attachment A at iii; 81 (Sprint) at 12.

[417] Comment 16 (USTA) at 7.

[418] Comment 5 (Fun Lines) at 2.

[419] Comment 35 (AIP) at 13.

[420] Comment 61 (ICN) at 10.

[421] Comment 23 (VRS) at 11.

writing within 30 days after receiving the customer's notice *unless* the billing entity resolved its dispute with the customer within that 30 days by taking the action set forth in § 308.7(d)(2). The Commission asked for comments as to whether billing entities should have to provide written acknowledgment.[422] CA responded in the affirmative, commenting that there is no way of ensuring that the customer receives acknowledgement of his or her billing error notice.[423] NACAA agreed, stating that if the customer is to be permitted to give oral notice of a billing error, the billing entity's acknowledgement must be in writing.[424] Fun Lines commented that billing entities should be subject to written notification requirements just as credit card issuers are under the FCBA.[425]

A number of commenters expressed opposition to requiring written acknowledgement.[426] MCI, AT&T and USTA commented that the telecommunications industry is accustomed to responding to customers telephonically and is not equipped to handle large amounts of written communications. They voiced support for permitting the industry to maintain the *status quo*.[427] While objecting to requiring written acknowledgement, Sprint noted that "the customer will receive written notification through his or her regularly rendered billing statements." [428] Indeed, one reason the Commission views the written acknowledgement requirement as not being burdensome to billing entities is because it may be satisfied by a notation on the customer's billing statement (*e.g.*, "Your dispute is acknowledged.").

One commenter, AT&T proposed that billing entities be given 45 days in which to acknowledge a customer's billing error notice. AT&T explained that in instances where its customers call the local exchange carrier ("LEC") for a billing adjustment, the LEC must relay the customer dispute to AT&T before it can begin to investigate. According to AT&T, this is done by memorandum, which AT&T often receives as much as two weeks after the customer has notified the LEC of the billing dispute. Thus, AT&T claims it would not, in many instances, be able to resolve the customer's dispute within the initial 30 days, thus necessitating its sending the customer a written acknowledgement, a requirement it would like to avoid.[429]

The Commission believes that a 30-day written acknowledgement requirement would not disadvantage interexchange carriers ("IXCs") in the manner AT&T described. Section 308.7(o) of the Rule, discussed below in greater detail, will require a LEC in the situation AT&T described to either: (1) Promptly provide the customer with the name, address, and telephone number of the billing entity responsible for receiving and responding to customer billing error notices; or (2) relay the customer's billing error notice to the responsible billing entity within 15 days after receiving it. Moreover, the 30-day time frame for acknowledging the customer's notice would not begin in such situations until the responsible billing entity actually received the notice. Thus, AT&T and similarly-situated IXCs would have as much time to resolve customer's billing error disputes as other billing entities.

Nevertheless, the Commission seeks to avoid imposing additional paperwork requirements on billing entities where possible. For this reason, the final Rule affords billing entities 40 days in which to provide written acknowledgement of a customer's billing error notice. The Commission has determined that the additional 10 days will give the billing entity, in almost all instances, sufficient time to send the written acknowledgement on or with the customer's next regularly scheduled billing statement and, thus, avoid the expense of a separate mailing for the acknowledgement.

Under § 308.7(d)(2) of the Rule, the billing entity may resolve its dispute with the customer in one of two ways: (1) It may simply credit the customer's account in the amount disputed without conducting further investigation; or (2) it may elect to investigate the matter and, based on the results of its investigation, make any appropriate adjustments in the customer's account. If the billing entity opts to credit the customer's account without investigation, and a providing carrier or vendor are also parties to the transaction, the billing entity must tell the customer that its crediting of the customer's account may result in efforts by the vendor, its agent, or the providing carrier (whichever applies) to collect the disputed charge. This disclosure is not required, however, if the vendor, its agent, or the providing carrier will not attempt to collect the disputed charge. The burden is on the billing entity to ensure either that this disclosure is given or no secondary collection efforts are undertaken.

Section 308.7(d)(2)(i) of the proposed rule would have required the billing entity to provide the customer with the name, mailing address, and business telephone number of the other parties to the transaction.[430] Several commenters objected to this requirement. Nynex and Bell Atlantic stated that the LECs do not have this information for vendors because the LEC's have no direct relationship with vendors.[431] They have only the program name of the pay-per-call service, which is supplied by the IXC.[432] Bell Atlantic commented that it would be a significant burden to have to distribute lists to its 5,000 service representatives showing the vendors for thousands of pay-per-call telephone numbers and, furthermore, these lists would change daily as carriers assigned numbers to new providers or reassigned numbers from one provider to another.[433] AT&T recommended that the rule be modified to require that billing entities provide this information only upon customer request.[434]

In response to these concerns, the Commission has modified § 308.7(d)(2)(i) of the final Rule to permit the billing entity the option of providing the customer with identifying information about the providing carrier and vendor, as applicable, or providing the customer with a local or toll-free telephone number where the customer can obtain the information directly. This information need only be disclosed if the billing entity's crediting of the customer's account will result in an attempt by the vendor or providing carrier to collect the disputed charge.

Under § 308.7(d)(2)(ii), if the billing entity decides to investigate a billing error dispute, it must contact any parties whose input is needed to reasonably determine whether a billing error occurred as alleged by the customer. If the results of the investigation lead it to conclude that a billing error occurred as alleged, it must credit the customer's account for any disputed amount. If the billing entity determines as a result of the investigation that no billing error occurred, or that a different billing error occurred from that asserted by the customer, the billing entity must explain to the customer the reasons for

[422] 58 FR at 13384 (question 35.b).

[423] Comment 31 (CA) at 12.

[424] Comment 40 (NACAA) at 13.

[425] Comment 5 (Fun Lines) at 2.

[426] Comments 18 (Bell Atlantic) at 5; 33 (ITA) at 9; 37 (PPI) at 51; 44 (Southwestern) at 5; 50 (BellSouth) at 11; 55 (GTE) at 8–11; 62 (AT&T), Attachment A at iii; 63 (NAIS) at 43–44; 81 (Sprint) at 12–13.

[427] Tr. at 212–15.

[428] Comment 81 (Sprint) at 12.

[429] Comment 62 (AT&T) at 2–3.

[430] 58 FR at 13389.

[431] Comments 15 (Nynex) at 4–5; 18 (Bell Atlantic) at 4–5.

[432] Comment 15 (Nynex) at 4–5.

[433] Comment 18 (Bell Atlantic) a 4–5.

[434] Comment 62 (AT&T) at 6.

that determination and make any appropriate adjustments to the customer's account. The billing entity need only provide the customer with a written explanation, including copies of supporting documents, if the customer requests it.

Section 308.7(d)(3) requires a billing entity to complete the steps required by § 308.7(d)(2) within two complete billing cycles after receiving the customer's billing error notice, which in no event may be more than 90 days. If a billing entity were to comply with § 308.7(d)(2)(i)—*i.e.*, to correct the customer's bill and credit his account—within 40 days after receiving the customer's billing error notice, no written communication of any kind would need to be provided to the customer. This provision was received favorably by the telephone companies,[435] while the information providers expressed concern that it might encourage the telephone companies to credit customers' accounts for disputed amounts that might very well be legitimate charges.[436] The Commission believes that the billing review procedures of § 308.7(d) strike a reasonable balance among the consumer's interest in having billing errors resolved quickly and efficiently, the billing entity's interest in being able to operate free of undue administrative burdens, and the information provider's interest in receiving fair compensation for pay-per-call services provided to the public.

Section 308.7(d)(3)(i) provides that if a billing entity determines that any disputed amount is in error, it must notify the providing carrier and vendor of its disposition of the billing error and the reasons for its action. Under § 308.7(d)(3)(ii), if the billing entity determines that any portion of the disputed amount should be sustained, it must promptly notify the customer in writing of the time when payment of that amount is due.

The proposed rule would have required the billing entity to give the customer at least 20 days from the date of notice to pay this sustained amount.[437] A number of commenters opposed the 20-day requirement as unreasonable and unnecessary.[438] USTA commented that the LECs should be permitted to include disputed amounts determined not to be in error in their next bill cycle for payment within the normal time set by state regulation. It stated that the "time provided by specific state regulation for telephone bill payment is likely to be reasonable, and is likely to have been subject to a preexisting determination generally to the effect that the period set would not impose harsh conditions on the customer."[439] In response to these comments, the Commission has modified § 308.7(d)(3)(ii) of the final Rule to permit the billing entity to require payment of disputed amounts determined not to be in error within the number of days the customer is ordinarily allowed by custom, contract, or state law to pay undisputed amounts, but in no case less than 10 days.

Under § 308.7(d)(3)(ii), the billing entity also must notify the customer in writing that failure to pay the disputed amount determined not to be in error may be reported to a credit reporting agency, or may subject the customer to collection action. This section of the final Rule has been changed to state that if there is no possibility that either event will occur, the notice need not, and indeed should not, be sent. For example, if a third-party biller does not report delinquent customers to credit reporting agencies and takes no action to collect unpaid pay-per-call charges *and*, by contract or for policy reasons, forbids its clients to undertake such actions, no such notice should be sent to the customer. If only one of the events was operational (*e.g.*, the third-party biller does not report to credit reporting agencies but does undertake collection activity), the notice should mention only the possibility of that particular event occurring.

5. Section 308.7(e): Withdrawal of Billing Error Notice

Under § 308.7(e) of the proposed rule, a billing entity would not have had to proceed with the billing review procedures if the customer agreed, before the notification requirements of § 308.7(d) were triggered, that the billing statement was correct.[440] AT&T observed that customers may not always be willing to expressly admit that no billing error occurred, even when they have indicated they no longer intend to pursue a billing dispute.[441] The final Rule addresses this problem by permitting the billing entity to dispense with the billing review if the customer agrees that the billing statement was correct or if the customer agrees to withdraw voluntarily the billing error notice. This may be achieved by the customer's clear affirmation that he or she does not wish the billing entity to pursue further investigation of the dispute.

6. Section 308.7(f): Limitation on Responsibility for Billing Error

Section 308.7(f) limits the billing entity's obligation to respond to a customer's billing error complaint to the procedures set forth in § 308.7(d). Once the billing entity follows the prescribed procedures, it will not have to continue to respond in the same manner to subsequent assertions by the customer of the same billing error. The Commission is adopting this section as proposed.

7. Section 308.7(g): Customer's Right to Withhold Disputed Amount; Limitation on Collection Action

Section 308.7(g) sets forth the customer's right to withhold payment of any disputed amount after having provided notice of a billing error. No one may try to collect this amount from the customer until the billing entity has completed its billing review and given the customer as much time to make payment as the billing entity ordinarily affords for undisputed charges. The billing entity may continue to display the disputed charge on the customer's billing statement during the billing review, so long as the statement discloses that payment of the disputed amount is not required. There is no restriction on the billing entity's right to collect any undisputed charges on the customer's bill. The Commission is adopting this section as proposed.

8. Section 308.7(h): Prohibition on Charges

Section 308.7(h) of the proposed rule provided that if a billing error is determined to have occurred, whether as alleged by the customer or in a different amount or manner, no charge may be imposed on the customer related to the billing review. The proposed rule also provided that if it is determined that no billing error occurred, any charges imposed on the customer must be reasonable and not have the effect of discouraging customers from asserting their billing error rights. The Commission solicited comment on whether there should be an absolute prohibition on charging for billing error investigations.[442]

The Commission received one comment in favor of permitting billing entities to charge for billing error investigation. AIP commented that it should be permissible for a billing entity

[435] See, *e.g.*, Comment 13 (NTCA) at 4–5.

[436] Comments 5 (Fun Lines) at 2–3; 63 (NAIS) at 46–47; Tr. at 224.

[437] 58 FR at 13389.

[438] Comments 15 (Nynex) at 5–6; 16 (USTA) at 15–16; 35 (AIP) at 13–14; 50 (BellSouth) at 11.

[439] Comment 16 (USTA) at 15–16.

[440] 58 FR at 13389.

[441] Comment 62 (AT&T) at 7.

[442] 58 FR at 13384 (question 36).

to impose a reasonable charge "unless the error ultimately found is a 'material' error."[443] One commenter suggested that the Rule should be silent on the issue.[444] Several commenters were adamantly opposed to allowing billing entities to impose any charge for a billing review. NACAA and NAAG contended that allowing any charges for conducting a billing review would only discourage consumers from exercising their rights.[445] VRS agreed and observed that vendors could recoup their investigation costs through adjustments to their overall pricing structure.[446] NCL stated that unless there is an absolute prohibition on such charges, billing entities are likely to abuse the privilege and coerce customers into accepting inaccurate or excessive charges for pay-per-call services.[447] At the public workshop conference, Commission staff asked whether industry members felt they needed to have the right to charge customers for investigating billing errors that are determined not be valid. There was no response in support of permitting such charges.[448]

On balance, the Commission has concluded that the imposition of any charges for billing error investigations could deter consumers from the assertion of legitimate disputes. Therefore, the final Rule prohibits billing entities from imposing any charges in connection with a billing review.

9. Section 308.7(i): Restrictions on Credit Reporting

Section 308.7(i) of the final Rule is identical to the proposed rule except for the modification to § 308.7(i)(1), relating to the time allowed the customer to pay any disputed amount found not to be in error. The modification conforms this provision to the change in § 308.7(d)(3)(ii), discussed above.

Section 308.7(i) forbids anyone from reporting or threatening to report negative information related to the customer's withholding payment of the disputed amount until the billing review is completed and the customer has been given as much time to make payment as the billing entity ordinarily affords for undisputed charges. If, before this time expires, the customer reasserts his dispute with respect to the same billing error, no one may report the customer's account as delinquent without also reporting that the customer disputes the delinquent amount. Additionally, any person reporting such a delinquency must notify the customer in writing of the name and address of each person to whom it reported the delinquency. Any subsequent resolution of the dispute would have to be reported in writing to anyone to whom the delinquency was reported initially.

One commenter objected to what it perceived to be the Rule's allowing a customer to perpetuate a billing error dispute indefinitely. PPI stated that the Rule would permit a persistent consumer to "repeatedly seek review of a claim and thus save himself from having a bad credit report."[449] In fact, the only protection this provision gives a customer who reasserts a billing error is to inform the credit reporting agency or other party who receives notice of the customer's delinquency that the customer disputes a matter with respect to that delinquency. Except for the aforementioned restrictions on credit reporting, any interested party may pursue all of its other normal collection procedures (including involuntary blocking of the customer's access to future pay-per-call services) if a disputed charge remains unpaid after the billing entity has completed the billing review and determined that no billing error occurred.

10. Section 308.7(j): Forfeiture of Right to Collect Disputed Amount

Section 308.7(j) requires a billing entity, providing carrier, or vendor to forfeit the amount of any telephone-billed purchase (up to $50 per transaction) if it fails to comply with the Rule's billing error resolution requirements. The penalty applies only to the person or persons who failed to comply. The provision does not prevent any other interested party from pursuing collection of any legitimate amount to which it is entitled. For example, a billing entity's failure to respond properly to a customer's billing error notice would not result in forfeiture of the vendor's right to pursue independent collection of the charge.

AIP commented that the penalty should apply only if the failure to comply was "material,"[450] whereas NACAA believes the provision should compel the billing entity, providing carrier, and vendor, and their agents, to forfeit the right to collect from customers any charges involving violations of the TDDRA.[451] The purpose of the forfeiture penalty is to enforce compliance with the billing and collection provisions of the Rule, including those provisions some might consider to be technical in nature. There are other provisions of the Rule that should serve to deter the types of practices the TDDRA was enacted to prevent.[452] Therefore, the Commission has decided to issue this provision of the Rule as initially proposed.

11. Section 308.7(k): Notification of Returns and Crediting of Refunds

Section 308.7(k) prescribes the procedure a vendor who is not billing entity must follow after agreeing to give a customer a refund or credit for returned goods or a forgiven debt. Within seven days after the vendor agrees to give the customer a cash refund, the vendor must send the refund directly to the customer's address, and must also notify the appropriate billing entity that the refund has been given. The proposed rule did not provide for notice of the refund to be sent to the billing entity. However, AT&T commented that the addition was advisable to prevent the customer from receiving an adjustment from both the vendor and the billing entity.[453] The Commission agrees.

If the vendor agrees to credit the customer's account for the returned property or forgiven debt, the vendor has seven days in which to send a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. Within seven days after receiving the credit statement, the billing entity must credit the customer's account for the amount of the refund. The proposed rule gave the billing entity only three days to effect the credit. Two commenters noted that the billing entity responsible for responding to and handling billing error disputes, *e.g.*, an IXC, might not be the billing entity that originally billed the customer for the charge, *e.g.*, a LEC. If the vendor sent the credit statement to the IXC, the IXC might not be able to relay the credit statement to the LEC in sufficient time to ensure that the customer's account was credited within three days.[454] Therefore, the final Rule gives the billing entity seven days in which to credit the customer's account.[455]

[443] Comment 35 (AIP) at 14.

[444] Comment 37 (PPI) at 52.

[445] Comment 40 (NACAA) at 14; 42 (NAAG) at 31.

[446] Comment 23 (VRS) at 13.

[447] Comment 21 (NCL) at 19–20.

[448] Tr. at 229. Although AIP, in its comments filed with the Commission, had expressed support for permitting such charges in certain situtations, it was silent on the issue at the conference.

[449] Comment 37 (PPI) at 23.

[450] Comment 35 (AIP) at 14.

[451] Comment 40 (NACAA) at 15.

[452] *See, e.g.*, § 308.5(k), making pay-per-call service providers liable for refunds to consumers who have been billed for services found to have violated any provision of this Rule or any other Federal law.

[453] Comment 62 (AT&T) at 6.

[454] Comments 55 (GTE) at 11; 62 (AT&T) at 7.

[455] AIP commented that the Rule does not provide vendors sufficient time to perform the required

12. Section 308.7(l): Customer's Right to Assert Claims or Defenses

Section 308.7(l) makes any billing entity or providing carrier who attempts to collect charges from a customer for a disputed telephone-billed purchase subject to any claims or defenses that the customer may lawfully assert against the vendor with respect to that purchase. The provision remains unchanged from the proposed rule. The customer's rights under this provision are not dependent on the customer's assertion of a billing error pursuant to § 308.7(b). However, the customer must first have made a good faith attempt to settle the dispute with the vendor, or the providing carrier (other than the billing entity) if the vendor is not readily accessible. Any determination of what claims or defenses are valid as to the vendor must be made under state or other applicable law. The billing entity or providing carrier cannot be liable under this provision for any amount greater than the amount of the telephone-billed purchase, plus any related charges for which the customer has been billed.

13. Section 308.7(m): Retaliatory Actions Prohibited

Section 308.7(m) makes it unlawful to accelerate the customer's debt or to restrict to terminate the customer's access to pay-per-call services to penalize the customer for exercising in good faith any billing error rights accorded by these regulations. This does not constitute an absolute prohibition on all actions that might effectively limit a customer's access to pay-per-call services. For example, if a vendor or providing carrier regularly suspends a customer's access to pay-per-call services when that customer's outstanding debt exceeds a certain dollar amount, that vendor or providing carrier would not be prohibited from applying any disputed amount towards that outstanding debt. Moreover, this provision does not preclude a billing entity, providing carrier, or vendor from blocking or ordering the blocking of pay-per-call services to subscribers who have incurred, but not paid, legitimate pay-per-call charges.[456] Furthermore, a billing entity, providing carrier, or vendor will not have violated this section if it took adverse action against the customer with respect to a telephone-billed purchase without knowing that the customer had asserted a billing error related to that purchase.[457] The determining factor in each instance is whether the action was motivated, or reasonably appears to have been motivated, by a desire to retaliate against the customer for asserting his or her billing error rights.

14 Section 308.7(n): Notice of Billing Error Rights

Section 308.7(n) requires a billing entity to provide its customers with written notice of their pay-per-call billing rights at least once per calendar year. If the billing entity is not a common carrier, it must follow the procedures set forth in § 308.7(n)(1)(i), and send the notice to each customer (whether that customer is an old, current, or new customer) with the first billing statement for a telephone-billed purchase mailed or delivered to that customer after the effective date of the regulations. Thereafter, the billing entity must ensure that the customer receives the notice at least once during each subsequent calendar year in which that customer receives a bill for a telephone-billed purchase.

Billing entities that are common carriers have the option of sending the annual statement to only those customers whom they have billed for a telephone-billed purchase, or they may elect to send the annual statement to all of their customers who receive telephone service of any kind. If they choose the former approach, they must follow the procedure set forth in § 308.7(n)(1)(i). If they opt for the latter, they must comply with § 308.7(n)(1)(ii), which requires the billing entity to send the annual statement to all of its customers within 60 days after the effective date of the regulations. The billing entity must then send the notice at least once each following year to all of its customers at intervals of not less than six months nor more than 18 months.

The proposed rule would have prescribed the precise language that billing entities must disclose in the notices.[458] Two commenters suggested that the billing entity should have the flexibility to fashion its own notice, so the material information might be arranged and disclosed in a more cost-effective manner.[459] The Commission, on reconsideration, has modified the final Rule to specify the information that must be disclosed without mandating specific language.

The annual statement must inform the customer how to initiate a billing review. The presumption set forth in § 308.7(c) of the Rule need only be disclosed if the customer is permitted to provide oral notice. The annual statement must also describe the procedure the billing entity must follow to respond to a billing error notice and to investigate the alleged billing error. Additionally, the annual statement must disclose the customer's right to withhold payment of any disputed amount and the restrictions placed on collection and adverse reporting of the disputed amount. Finally, the statement must tell the customer about the forfeiture penalty.

Instead of sending the annual statement, the billing entity may choose to send an abridged pay-per-call billing rights summary to its customers with each billing statement. Like the annual statement, the alternative summary statement must inform the customer how to initiate a billing review, including the presumption applying to oral notice, if such notice is permitted. However, the summary notice need not explain the procedure the billing entity must follow to respond to and investigate a billing error complaint. Also, the alternative summary must contain a statement (which may be abridged) of the customer's rights with respect to the collection of any disputed amount. It need not mention the forfeiture penalty.

Section 308.7(n)(3), which sets forth general requirements concerning the billing error rights notices, has been added to the final Rule. If the billing entity elects to send an annual statement, it must be provided on a separate statement that the customer may keep. A portion of the customer's billing statement containing the disclosures is permissible under this section if that portion can be easily detached (*e.g.*, with perforations) and kept, and the statement advises the customer to do so.

---

tasks, contending that vendors should have as much time to give credits and refunds as customers have to assert a billing error, 60 days. Comment 35 (AIP) at 14–15. The Commission believes, however, this fails to take into consideration that § 308.7(k) only applies where the vendor has already made the determination to give a refund or credit to the customer. The time requirements are similar to those prescribed under the FCBA for credit card purchases, through which many merchants also process a large number of transactions.

[456] MCI proposed that § 308.7(m) state expressly that blocking for nonpayment of legitimate pay-per-call charges is not precluded by this section. Comment 32 (MCI) at 6–7. However, stating this in the Rule might dilute the principal message of this provision, which is that a customer should not be subjected to any adverse action solely because of that customer's good faith exercise of his or her billing error rights under this Rule. The Commission believes that the issue is addressed satisfactorily by discussion in this Statement of Basis and Purpose.

[457] BellSouth expressed concern that a LEC that acts as a collection agent for an IXC that performed its won billing might not be aware of a pending dispute. Comment 50 (BellSouth) at 12.

[458] 58 FR at 13378, 13390.

[459] Comments 32 (MCI) at 7–12; 50 (BellSouth) at 13.

If the alternative summary statement is used and is disclosed on each copy of the customer's billing statement, it need not be in a form that the customer may keep. If the disclosures are made on the back of the statement, the front of the statement must include a clear and conspicuous reference to the disclosures on the back.

One commenter proposed that billing entities be permitted to include additional information on the billing rights notice.[460] Section 308.7(n)(3)(iii) permits such information to be disclosed on the notice, but it must not confuse or mislead the customer or obscure or detract from the required disclosures, which must appear separately and above any other information.

15. Section 308.7(o): Multiple Billing Entities

Section 308.7(o) explains the responsibilities of multiple billing entities involved in a telephone-billed purchase. It remains unchanged from the proposed rule. This provision gives these billing entities the flexibility to decide among themselves the one that will be responsible for making any disclosures and for complying with the other requirements of the Rule.

The Commission received several comments seeking clarification of the role of the LEC under this provision where that company renders bills for pay-per-call services but the responsibility for handling billing complaints and inquiries resides with the IXC.[461] The Rule provides that if the LEC receives notice of a billing error from a customer, the LEC must either identify for the customer the proper party to whom the notice should be sent or the LEC may accept the billing error notice on behalf of the IXC, in which case it must transmit the notice to the IXC within 15 days. The LEC would have no further responsibility with respect to the billing error dispute, even if the customer persisted in attempting to have the LEC credit his or her account. However, nothing in this section would preclude the LEC from crediting the customer's account in that situation. If the IXC objects to the LEC doing so, it must resort to the terms of its contract with the LEC for relief.

16. Section 308.7(p): Multiple Customers

Section 308.7(p) provides that disclosures may be made to any customer primarily liable on a joint account. It remains unchanged from the proposed rule.

17. Other Questions

The proposed rule did not contain any provision requiring billing entities, providing carriers, or vendors to maintain records with respect to the billing and collection of pay-per-call services. The NPR solicited comment on whether such a requirement is needed.[462] Many commenters noted that common carriers are required by the FCC to keep call detail records for 18 months. These records identify the name, address, and telephone number of the caller, the telephone number called, and the date, time, and length of the call.[463] Sprint commented, "These records provide the back-up for the services provided by common carriers acting as billing entities and/or providing carriers in any pay-per-call service transaction."[464] NTCA noted that state laws already require LECs "to respond to consumer complaints within designated time frames, to resolve complaints and to provide consumers back-up records to resolve billing disputes."[465] The common carriers maintained that these records are sufficient to demonstrate compliance with the billing and collection procedures of the Rule, and that a separate FTC record retention provision is not needed.[466] They recommended, however, that should the FTC decide to implement a record retention provision, it should mirror the FCC rule.[467]

The consumer groups and regulatory agencies commented in support of some form of recordkeeping provision, as did IIA, a trade association of information providers. NACAA, asserting that such records are vital to law enforcement officials, recommended that billing entities be required to keep records for at least as long as the applicable statute of limitations.[468] CA and IIA believe that billing entities should be subject to the same record retention provisions as found in the TILA and FCBA.[469] Regulation Z (which implements the TILA and FCBA) requires creditors generally to maintain evidence of compliance for two years.[470] The value of implementing such a provision is questionable when common carriers already are required by the FCC to keep records for 18 months.

In fact, at least some of the parties potentially affected by a recordkeeping provision currently keep records for longer than 18 months. USTA said this is true for some of its members, and that one member (BellSouth) keeps records for 3–10 years.[471] ITA, a third-party biller, stated it has kept billing records for as long as it has been in operation, approximately two years.[472] TPI, an information provider and service bureau, said it has kept its records for all of the four years it has been in operation.[473]

Finally, the record shows that the state regulatory agencies have had no difficulties obtaining relevant records in connection with their investigations of pay-per-call services, except in certain atypical situations.[474] Therefore, the Commission has concluded that there is insufficient evidence at the present time to support the need for a specific recordkeeping provision with respect to the billing and collection procedures of the Rule.

The Commission also solicited data concerning the practices of third-party billers. Specifically, the Commission asked whether the Rule should include additional protections for consumers who deal with third-party billers.[475] Only a few commenters responded. The gist of these comments was that third-party billers should be subject to the same requirements as other billing entities—no more, no less.[476] Therefore, the Commission has determined that there is insufficient evidence to justify imposing any additional requirements on third-party billers.

18. Relation to State Laws

Section 302(a) of the TDDRA[477] provides that no person subject to the provisions of Title III (Billing and Collection) of the final Rule shall be exempt from complying with the laws of any state with respect to telephone billing practices, except, and only, to the extent that those laws are inconsistent with any provision of Title III. The Commission is given the authority to determine whether such inconsistencies exist. A billing entity, providing carrier, vendor, state, or other interested party may petition the

[460] Comment 32 (MCI) at 9–10.

[461] Comments 18 (Bell Atlantic) at 4; 37 (PPI) at 24; 63 (NAIS) at 48.

[462] 58 FR at 13384 (question 37).

[463] Comments 18 (Bell Atlantic) at 7; 81 (Sprint) at 10, citing 47 CFR 42.6.

[464] Comment 81 (Sprint) at 10.

[465] Comment 13 (NTCA) at 7.

[466] *See, e.g.*, Comment 16 (USTA) at 12.

[467] Comments 81 (Sprint) at 10; 60 (Pilgrim) at 18.

[468] Comment 40 (NACAA) at 14.

[469] Comments 31 (CA) at 12; 52 (IIA) at 35.

[470] 12 CFR 226.25.

[471] Tr. at 468.

[472] Tr. at 465.

[473] Tr. at 470.

[474] Tr. at 484–85.

[475] 58 FR at 13384 (question 39).

[476] Comments 23 (VRS) at 14; 31 (CA) at 12; 33 (ITA) at 7.

[477] 15 U.S.C. 5722(a).

Commission to determine whether a state law requirement is inconsistent.

Section 302(b) of the TDDRA[478] provides that the Commission shall by regulation exempt from Title III any class of telephone-billed purchase transactions within any state if it determines that under the law of that state, that class of transactions is subject to requirements substantially similar to those imposed under the Act, or that such state law gives greater protection to consumers, and that there is adequate provision for enforcement. Any state may apply to the Commission to exempt a class of transactions within that state from the requirements of the Federal law and the corresponding provisions of this Rule.

A petition for the Commission to determine whether a state law requirement is inconsistent , or an application for an exemption of a class of transactions, shall be in writing and addressed to the Secretary, Federal Trade Commission, Washington, DC 20580.

G. Section 308.8: Severability

This section of the final Rule states the Commission's intent that if any Rule provision is stayed or held invalid, the other provisions will remain in effect.

H. Section 308.9: Rulemaking Review

This section of the Rule, which was not included in the proposal set forth in the NPR, states the Commission's intention to undertake a review of the Rule, no later than four years after its effective date, in order to evaluate its operation.

III. Regulatory Flexibility Act

In publishing the proposed regulations, the Commission certified, subject to subsequent public comment, that the proposed regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities and, therefore, that the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), requiring the initial regulatory analysis, did not apply.[479] The Commission noted that any economic costs imposed on small entities by the proposed regulations were, in many instances, specifically imposed by statute. Where they were not, efforts had been made to minimize any unforeseen burden on small entities (for example, by making the proposed rule's requirements flexible). The Commission determined, on the basis of the information available to the staff at that time, that the proposed regulations would result in few, if any, independent additional costs. The Commission nonetheless requested comment on the effects of the proposed regulations on costs, profitability, competitiveness, and employment in small entities, in order not to overlook any substantial economic impact that would warrant a final regulatory flexibility analysis.[480]

The information and comments received by the Commission did not provide sufficient reliable statistical or analytical data to quantify precisely the effect, differential or otherwise, of the proposed regulations on small entities versus its effect on all entities that may be subject to these regulations. While virtually all of the comments made general reference to the economic effects of the proposed regulations, only two comments addressed the Commission's request for comments on the effect of the proposed regulations with specific regard to small entities. One commenter, not citing any particular provision of the proposed regulations, simply urged that the Commission's rules take into account the higher costs for small IXC's to acquire 900 numbers than to acquire such service through other exchanges.[481] The second commenter, representing nearly 500 small local exchange carriers, believed that § 308.7(o) of the proposed regulations, regarding procedures for responding to billing error notices, would have a favorable impact on administrative and customer complaint costs shouldered by their small member companies that provide billing services to pay-per-call providers.[482] As the commenter noted, the Commission's rule would permit billing entities to decide between or among themselves who among them should be responsible for making required disclosures, investigating complaints, or complying with other requirements of the Rule when more than one billing entity may be involved in a telephone-billed purchase.

Accordingly, the Commission has determined that the public comments and information before the Commission do not alter the conclusion that the Commission's Rule would not have a sufficiently significant economic impact on a substantial number of small entities to warrant a final regulatory flexibility analysis under the Regulatory Flexibility Act. This notice serves as certification to that effect to the Small Business Administration.

IV. Paperwork Reduction Act

The NPR solicited comments on the need for and scope of possible recordkeeping requirements in provisions governing Commission access to information (§ 308.6) and billing and collection for pay-per-call services (§ 308.7).[483] Such requirements, if adopted, would constitute "collections of information" as defined under the Paperwork Reduction Act.[484] As discussed elsewhere in this Statement of Basis and Purpose, the Commission has determined, on the basis of public comments, not to include such requirements in its final Rule. Accordingly, the requirements of the Paperwork Reduction Act are not applicable.

V. Effective Date

One commenter stated that members of the pay-per-call industry will need a certain amount of time to make changes in their business practices to reflect the new requirements of the final Rule.[485] Specifically, Fun Lines claimed that it can take up to four months to remove or change existing pay-per-call advertisements, since the layout and printing of certain periodicals often is completed months in advance. Fun Lines requested adequate time to make these changes.

The Commission agrees that there should be a period of time between the date this Rule is prescribed and its effective date. The Commission believes that three months is an adequate amount of time to address the industry's needs in this regard.[486] Accordingly, the effective date for this Rule is November 1, 1993.

---

[478] 15 U.S.C. 5722(a).

[479] 58 FR at 13379.

[480] *Id.; see also id.* at 13384 (question 42).

[481] Comment 60 (Pilgrim) at 22–23. This rulemaking does not reach whether such cost differentials are just or reasonable or warrant investigation, as the commenter also urged the Commission and the FCC to address.

[482] Comment 13 (NTCA) at 2–4; *see also* comment 16 (USTA) at 4–5. While USTA did not comment on the effect of the proposed regulations specifically as to small entities, USTA notes that its membership consists of over 1,000 local exchange carriers offering about 99% of the nation's local telephone lines, and that the overwhelming majority of these carriers are small telephone companies with fewer than 10,000 telephone lines, with some of these companies having fewer than 50 such lines.

[483] 58 FR at 13384 (questions 32 and 34).

[484] 44 U.S.C. 3501–3520. *See* 44 U.S.C. 3502; 5 CFR 1320.7.

[485] Comment 5 (Fun Lines) at 2.

[486] Three months is consistent with the lead time allowed before the effective date in other Commission rulemakings. *E.g.*, Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances under the Energy Policy and Conservation Act; Ranges of Comparability for Refrigerators, Refrigerator-freezers, and Freezers, 58 FR 3224 (Jan. 8, 1993); Labeling and Advertising of Home Insulation, 44 FR 50218 (Aug. 27, 1979).

List of Subjects in 16 CFR Part 308

Advertising, 900 telephone numbers, Pay-per-call services, Telephone, Trade practices.

For the reasons set forth in the preamble, title 16 of the Code of Federal Regulations is amended by adding part 308 to read as follows:

PART 308—TRADE REGULATION RULE PURSUANT TO THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Sec.
308.1 Scope of regulations in this part.
308.2 Definitions.
308.3 Advertising of pay-per-call services.
308.4 Special rule for infrequent publications.
308.5 Pay-per-call service standards.
308.6 Access to information.
308.7 Billing and collection for pay-per-call services.
308.8 Severability.
308.9 Rulemaking review.

Authority: Pub. L. 102–556, 106 Stat. 4181 (15 U.S.C. 5701, et seq.)

§ 308.1 Scope of regulations in this part.

This rule implements titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, to be codified in relevant part at 15 U.S.C. 5711–14, 5721–24.

§ 308.2 Definitions.

(a) *Bona fide educational service* means any pay-per-call service dedicated to providing information or instruction relating to education, subjects of academic study, or other related areas of school study.

(b) *Commission* means the Federal Trade Commission.

(c) *Pay-per-call service* has the meaning provided in section 228 of the Communications Act of 1934, 47 U.S.C. 228.[1]

(d) *Person* means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(e) (1) *Presubscription or comparable arrangement* means a contractual agreement in which

(i) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

(ii) The service provider agrees to notify the consumer of any future rate changes;

(iii) The consumer agrees to utilize the service on the terms and conditions disclosed by the service provider; and

(iv) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers.

(2) Disclosure of a credit card or charge card number, along with authorization to bill that number, made during the course of a call to a pay-per-call service shall constitute a presubscription or comparable arrangement if the credit or charge card is subject to the dispute resolution requirements of the Fair Credit Billing Act and the Truth in Lending Act, as amended. No other action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating a presubscription or comparable arrangement.

(f) *Program-length commercial* means any commercial or other advertisement fifteen (15) minutes in length or longer or intended to fill a television or radio broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer.

(g) *Provider of pay-per-call services* means any person who sells or offers to sell a pay-per-call service. A person who provides only transmission services or billing and collection services shall not be considered a provider of pay-per-call services.

(h) *Reasonably understandable volume* means at an audible level that renders the message intelligible to the receiving audience, and, in any event, at least the same audible level as that principally used in the advertisement or the pay-per-call service.

(i) *Service bureau* means any person, other than a common carrier, who provides, among other things, access to telephone service and voice storage to pay-per-call service providers.

(j) *Slow and deliberate manner* means at a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement or the pay-per-call service.

(k) *Sweepstakes*, including games of chance, means a game or promotional mechanism that involves the elements of a prize and chance and does not require consideration.

§ 308.3 Advertising of pay-per-call Services.

(a) *General requirements*. The following requirements apply to disclosures required in advertisements under §§ 308.3(b)–(d), and (f):

(1) The disclosures shall be made in the same language as that principally used in the advertisement.

(2) Television video and print disclosures shall be of a color or shade that readily contrasts with the background of the advertisement.

(3) In print advertisements, disclosures shall be parallel with the base of the advertisement.

(4) Audio disclosures, whether in television or radio, shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(5) Nothing contrary to, inconsistent with, or in mitigation of, the required disclosures shall be used in any advertisement in any medium; nor shall any audio, video or print technique be used that is likely to detract significantly from the communication of the disclosures.

(6) In any program-length commercial, required disclosures shall be made at least three times (unless more frequent disclosure is otherwise required) near the beginning, middle and end of the commercial.

(b) *Cost of the call*. (1) The provider of pay-per-call services shall clearly and conspicuously disclose the cost of the call, in Arabic numerals, in any advertisement for the pay-per-call service, as follows:

(i) If there is a flat fee for the call, the advertisement shall state the total cost of the call.

(ii) If the call is billed on a time-sensitive basis, the advertisement shall state the cost per minute and any minimum charges. If the length of the program can be determined in advance, the advertisement shall also state the maximum charge that could be incurred if the caller listens to the complete program.

(iii) If the call is billed on a variable rate basis, the advertisement shall state,

---

[1] Section 228 of the Communications Act of 1934 states:

(1) The term *pay-per-call services* means any service—

(A) In which any person provides or purports to provide—

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(B) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) Which is accessed through use of a 900 telephone number or other prefix or area code designated by the (Federal Communications) Commission in accordance with subsection (b)(5) (47 U.S.C. 228(b)(5)).

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

in accordance with §§ 308.3(b)(1)(i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller.

(iv) The advertisement shall disclose any other fees that will be charged for the service.

(v) if the caller may be transferred to another pay-per-call service, the advertisement shall disclose the cost of the other call, in accordance with §§ 308.3(b)(1)(i), (ii), (iii), and (iv).

(2) For purposes of § 308.3(b), disclosures shall be made "clearly and conspicuously" as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the video disclosure shall appear adjacent to each video presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the video disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent. In addition, the video disclosure shall appear on the screen for the duration of the presentation of the pay-per-call number. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in: (A) An advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or (B) an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number. In an advertisement in which the pay-per-call number is presented *only* in the audio portion, the cost of the call shall be delivered immediately following the first and last delivery of the pay-per-call number, except that in a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(ii) In a print advertisement, the disclosure shall be placed adjacent to each presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent.

(iii) In a radio advertisement, the disclosure shall be made at least once, and shall be delivered immediately following the first delivery of the pay-per-call number. In a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(c) *Sweepstakes; games of chance.* (1) The provider of pay-per-call services that advertises a prize or award or a service or product at no cost or for a reduced cost, to be awarded to the winner of any sweepstakes, including games of chance, shall clearly and conspicuously disclose in the advertisement the odds of being able to receive the prize, award, service, or product at no cost or reduced cost. If the odds are not calculable in advance, the advertisement shall disclose the factors used in calculating the odds. Either the advertisement or the preamble required by § 308.5(a) for such service shall clearly and conspicuously disclose that no call to the pay-per-call service is required to participate, and shall also disclose the existence of a free alternative method of entry, and either instructions on how to enter, or a local or toll-free telephone number or address to which consumers may call or write for information on how to enter the sweepstakes. Any description or characterization of the prize, award, service, or product that is being offered at no cost or reduced cost shall be truthful and accurate.

(2) For purposes of § 308.3(c), disclosures shall be made "clearly and conspicuously" as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the disclosures may be made in either the audio or video portion of the advertisement. If the disclosures are made in the video portion, they shall appear on the screen in sufficient size and for sufficient time to allow consumers to read and comprehend the disclosures.

(ii) In a print advertisement, the disclosures shall appear in a sufficient size and prominence and such location to be readily noticeable, readable and comprehensible.

(d) *Federal programs.* (1) The provider of pay-per-call services that advertises a pay-per-call service that is not operated or expressly authorized by a Federal agency, but that provides information on a Federal program, shall clearly and conspicuously disclose in the advertisement that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency. Advertisements providing information on a Federal program shall include, but not be limited to, advertisements that contain a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal government connection, approval, or endorsement.

(2) For purposes of § 308.3(d), disclosures shall be made "clearly and conspicuously" as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the disclosure may be made in either the audio or video portion of the advertisement. If the disclosure is made in the video portion, it shall appear on the screen in sufficient size and for sufficient time to allow consumers to read and comprehend the disclosure. The disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(ii) In a print advertisement, the disclosure shall appear in a sufficient size and prominence and such location to be readily noticeable, readable and comprehensible. The disclosure shall appear in the top one-third of the advertisement.

(iii) In a radio advertisement, the disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(e) *Prohibition on advertising to children.* (1) The provider of pay-per-call services shall not direct advertisements for such pay-per-call services to children under the age of 12, unless the service is a bona fide educational service.

(2) For the purposes of this regulation, advertisements directed to children under 12 shall include: any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of children under 12, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of children under 12.

(3) For the purposes of this regulation, if competent and reliable audience composition or readership data does not demonstrate that more than 50% of the audience or readership is composed of children under 12, then the Commission shall consider the following criteria in determining whether an advertisement is directed to children under 12:

(i) Whether the advertisement appears in a publication directed to children under 12, including, but not limited to, books, magazines and comic books;

(ii) Whether the advertisement appears during or immediately adjacent to television programs directed to children under 12, including, but not limited to, children's programming as defined by the Federal Communications Commission, animated programs, and after-school programs;

(iii) Whether the advertisement appears on a television station or channel directed to children under 12;

(iv) Whether the advertisement is broadcast during or immediately adjacent to radio programs directed to children under 12, or broadcast on a radio station directed to children under 12;

(v) Whether the advertisement appears on the same video as a commercially-prepared video directed to children under 12, or preceding a movie directed to children under 12 shown in a movie theater;

(vi) Whether the advertisement or promotion appears on product packaging directed to children under 12; and

(vii) Whether the advertisement, regardless of when or where it appears, is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

(f) *Advertising to individuals under the age of 18.* (1) The provider of pay-per-call services shall ensure that any pay-per-call advertisement directed primarily to individuals under the age of 18 shall contain a clear and conspicuous disclosure that all individuals under the age of 18 must have the permission of such individual's parent or legal guardian prior to calling such pay-per-call service.

(2) For purposes of § 308.3(f), disclosures shall be made "clearly and conspicuously" as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number. The video disclosure shall appear on the screen for sufficient time to allow consumers to read and comprehend the disclosure. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in: (A) An advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or (B) an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number.

(ii) In a print advertisement, each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number.

(3) For the purposes of this regulation, advertisements directed primarily to individuals under 18 shall include: Any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of individuals under 18, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of individuals under 18.

(4) For the purposes of this regulation, if competent and reliable audience composition or readership data does not demonstrate that more than 50% of the audience or readership is composed of individuals under 18, then the Commission shall consider the following criteria in determining whether an advertisement is directed primarily to individuals under 18:

(i) Whether the advertisement appears in publications directed primarily to individuals under 18, including, but not limited to, books, magazines and comic books;

(ii) Whether the advertisement appears during or immediately adjacent to television programs directed primarily to individuals under 18, including, but not limited to, mid-afternoon weekday television shows;

(iii) Whether the advertisement is broadcast on radio stations that are directed primarily to individuals under 18;

(iv) Whether the advertisement appears on a cable or broadcast television station directed primarily to individuals under 18;

(v) Whether the advertisement appears on the same video as a commercially-prepared video directed primarily to individuals under 18, or preceding a movie directed primarily to individuals under 18 shown in a movie theater; and

(vi) Whether the advertisement, regardless of when or where it appears, is directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, massage, or the like.

(g) *Electronic tones in advertisements.* The provider of pay-per-call services is prohibited from using advertisements that emit electronic tones that can automatically dial a pay-per-call service.

(h) *Telephone solicitations.* The provider of pay-per-call services shall ensure that any telephone message that solicits calls to the pay-per-call service discloses the cost of the call in a slow and deliberate manner and in a reasonably understandable volume, in accordance with §§ 308.3(b)(1)(i)-(v).

(i) *Referral to toll-free telephone numbers.* The provider of pay-per-call services is prohibited from referring in advertisements to an 800 telephone number, or any other telephone number advertised as or widely understood to be toll-free, if that number violates the prohibition concerning toll-free numbers set forth in § 308.5(i).

§ 308.4 Special rule for infrequent publications.

(a) The provider of any pay-per-call service that advertises a pay-per-call service in a publication that meets the requirements set forth in § 308.4(c) may include in such advertisement, in lieu of the cost disclosures required by § 308.3(b), a clear and conspicuous disclosure that a call to the advertised pay-per-call service may result in a substantial charge.

(b) The provider of any pay-per-call service that places an alphabetical listing in a publication that meets the requirements set forth in § 308.4(c) is not required to make any of the disclosures required by §§ 308.3 (b), (c), (d) and (f) in the alphabetical listing, provided that such listing does not contain any information except the name, address and telephone number of the pay-per-call provider.

(c) The publication referred to in § 308.4(a) and (b) must be:

(1) Widely distributed;

(2) Printed annually or less frequently; and

(3) One that has an established policy of not publishing specific prices in advertisements.

§ 308.5 Pay-per-call service standards.

(a) *Preamble message.* The provider of pay-per-call services shall include, in each pay-per-call message, an introductory disclosure message ("preamble") in the same language as that principally used in the pay-per-call message, that clearly, in a slow and deliberate manner and in a reasonably understandable volume:

(1) Identifies the name of the provider of the pay-per-call service and describes the service being provided;

(2) Specifies the cost of the service as follows:

(i) If there is a flat fee for the call, the preamble shall state the total cost of the call;

(ii) If the call is billed on a time-sensitive basis, the preamble shall state

the cost per minute and any minimum charges; if the length of the program can be determined in advance, the preamble shall also state the maximum charge that could be incurred if the caller listens to the complete program;

(iii) If the call is billed on a variable rate basis, the preamble shall state, in accordance with §§ 308.5(a)(2)(i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller;

(iv) Any other fees that will be charged for the service shall be disclosed, as well as fees for any other pay-per-call service to which the caller may be transferred;

(3) Informs the caller that charges for the call begin, and that to avoid charges the call must be terminated, three seconds after a clearly discernible signal or tone indicating the end of the preamble;

(4) Informs the caller that anyone under the age of 18 must have the permission of parent or legal guardian in order to complete the call; and

(5) Informs the caller, in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, or that uses a trade or brand name or any other term that reasonably could be interpreted or construed as implying any Federal government connection, approval or endorsement, that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency.

(b) *No charge to caller for preamble message.* The provider of pay-per-call services is prohibited from charging a caller any amount whatsoever for such a service if the caller hangs up at any time prior to three seconds after the signal or tone indicating the end of the preamble described in § 308.5(a). However, the three-second delay, and the message concerning such delay described in § 308.5(a)(3), is not required if the provider of pay-per-call services offers the caller an affirmative means (such as pressing a key on a telephone keypad) of indicating a decision to incur the charges.

(c) *Nominal cost calls.* The preamble described in § 308.5(a) is not required when the entire cost of the pay-per-call service, whether billed as a flat rate or on a time sensitive basis, is $2.00 or less.

(d) *Data service calls.* The preamble described in § 308.5(a) is not required when the entire call consists of the non-verbal transmission of information.

(e) *Bypass mechanism.* The provider of pay-per-call services that offers to frequent callers or regular subscribers to such services the option of activating a bypass mechanism to avoid listening to the preamble during subsequent calls shall not be deemed to be in violation of § 308.5(a), *provided that* any such bypass mechanism shall be disabled for a period of no less than 30 days immediately after the institution of an increase in the price for the service or a change in the nature of the service offered.

(f) *Billing limitations.* The provider of pay-per-call services is prohibited from billing consumers in excess of the amount described in the preamble for those services and from billing for any services provided in violation of any section of this rule.

(g) *Stopping the assessment of time-based charges.* The provider of pay-per-call services shall stop the assessment of time-based charges immediately upon disconnection by the caller.

(h) *Prohibition on services to children.* The provider of pay-per-call services shall not direct such services to children under the age of 12, unless such service is a bona fide educational service. The Commission shall consider the following criteria in determining whether a pay-per-call service is directed to children under 12:

(1) Whether the pay-per-call service is advertised in the manner set forth in §§ 308.3(e)(2) and (3); and

(2) Whether the pay-per-call service, regardless of when or where it is advertised, is directed to children under 12, in light of its subject matter, content, language, featured personality, characters, tone, message, or the like.

(i) *Prohibition concerning toll-free numbers.* Any person is prohibited from using an 800 number or other telephone number advertised as or widely understood to be toll-free in a manner that would result in:

(1) The calling party being assessed, by virtue of completing the call, a charge for the call;

(2) The calling party being connected to an access number for, or otherwise transferred to, a pay-per-call service;

(3) The calling party being charged for information conveyed during the call unless the calling party has a presubscription or comparable arrangement to be charged for the information; or

(4) The calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products.

(j) *Disclosure requirements for billing statements.* The provider of pay-per-call services shall ensure that any billing statement for such provider's charges shall:

(1) Display any charges for pay-per-call services in a portion of the consumer's bill that is identified as not being related to local and long distance telephone charges;

(2) For each charge so displayed, specify the type of service, the amount of the charge, and the date, time, and, for calls billed on a time-sensitive basis, the duration of the call; and

(3) Display the local or toll-free telephone number where consumers can obtain answers to their questions and information on their rights and obligations with regard to their use of pay-per-call services, and can obtain the name and mailing address of the provider of pay-per-call services.

(k) *Refunds to consumers.* The provider of pay-per-call services shall be liable for refunds or credits to consumers who have been billed for pay-per-call services, and who have paid the charges for such services, pursuant to pay-per-call programs that have been found to have violated any provision of this rule or any other Federal rule or law.

(l) *Service bureau liability.* A service bureau shall be liable for violations of the rule by pay-per-call services using its call processing facilities where it knew or should have known of the violation.

§ 308.6 Access to information.

Any common carrier that provides telecommunication services to any provider of pay-per-call services shall make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

§ 308.7 Billing and collection for pay-per-call services.

(a) *Definitions.* For the purposes of this section, the following definitions shall apply:

(1) *Billing entity* means any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries.

(2) *Billing error* means any of the following:

(i) A reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made,

was not in the amount reflected on such statement.

(ii) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(iii) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(iv) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(v) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(vi) A computation error or similar error of an accounting nature on a billing statement of a telephone-billed purchase.

(vii) Failure to transmit a billing statement for a telephone-billed purchase to a customer's last known address if that address was furnished by the customer at least twenty days before the end of the billing cycle for which the statement was required.

(viii) A reflection on a billing statement of a telephone-billed purchase that is not identified in accordance with the requirements of § 308.5(j).

(3) *Customer* means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase, or who receives a billing statement for a telephone-billed purchase charged to a telephone number assigned to that person by a providing carrier.

(4) *Preexisting agreement* means a "presubscription or comparable arrangement," as that term is defined in § 308.2(e).

(5) *Providing carrier* means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint or inquiry.

(6) *Telephone-billed purchase* means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include:

(i) A purchase by a caller pursuant to a preexisting agreement with a vendor;

(ii) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule—

(A) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(B) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation; or

(iii) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(7) *Vendor* means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(b) *Initiation of billing review.* A customer may initiate a billing review with respect to a telephone-billed purchase by providing the billing entity with notice of a billing error no later than 60 days after the billing entity transmitted the first billing statement that contains a charge for such telephone-billed purchase. If the billing error is the reflection on a billing statement of a telephone-billed purchase not provided to the customer in accordance with the stated terms of the transaction, the 60-day period shall begin to run from the date the goods or services are delivered or, if not delivered, should have been delivered, if such date is later than the date the billing statement was transmitted. A billing error notice shall:

(1) Set forth or otherwise enable the billing entity to identify the customer's name and the telephone number to which the charge was billed;

(2) Indicate the customer's belief that the statement contains a billing error and the type, date, and amount of such; and

(3) Set forth the reasons for the customer's belief, to the extent possible, that the statement contains a billing error.

(c) *Disclosure of method of providing notice; presumption if oral notice is permitted.* A billing entity shall clearly and conspicuously[2] disclose on each billing statement or on other material accompanying the billing statement the method (oral or written) by which the customer may provide notice to initiate review of a billing error in the manner set forth in § 308.7(b). If oral notice is permitted, any customer who orally communicates an allegation of a billing error to a billing entity shall be presumed to have properly initiated a billing review in accordance with the requirements of § 308.7(b).

(d) *Response to customer notice.* A billing entity that receives notice of a billing error as described in § 308.7(b) shall:

(1) Send a written acknowledgement to the customer including a statement that any disputed amount need not be paid pending investigation of the billing error. This shall be done no later than forty (40) days after receiving the notice, unless the action required by § 308.7(d)(2) is taken within such 40-day period; and

(2)(i) Correct the billing error and credit the customer's account for any disputed amount and any related charges, and notify the customer of the correction. The billing entity also shall disclose to the customer that collection efforts may occur despite the credit, and shall provide the names, mailing addresses, and business telephone numbers of the vendor and providing carrier, as applicable, that are the subject of the telephone-billed purchase, or provide the customer with a local or toll-free telephone number that the customer may call to obtain this information directly. However, the billing entity is not required to make the disclosure concerning collection efforts if the vendor, its agent, or the providing carrier, as applicable, will not collect or attempt to collect the disputed charge; or

(ii) Transmit an explanation to the customer, after conducting a reasonable investigation (including, where appropriate, contacting the vendor or providing carrier),[3] setting forth the reasons why it has determined that no billing error occurred or that a different billing error occurred from that asserted, make any appropriate adjustments to the customer's account, and, if the customer so requests, provide a written explanation and copies of documentary evidence of the customer's indebtedness.

(3) The action required by § 308.7(d)(2) shall be taken no later than two complete billing cycles of the billing entity (in no event later than ninety (90) days) after receiving the

[2] The standard for "clear and conspicuous" as used in this section shall be the standard enunciated by the Board of Governors of the Federal Reserve System in its Official Staff Commentary on Regulation Z, which requires simply that the disclosures be in a reasonably understandable form. *See* 12 CFR part 226, Supplement I, Comment 226.5(a)(1)–1.

[3] If a customer submits a billing error notice alleging either the nondelivery of goods or services or that information appearing on a billing statement has been reported incorrectly to the billing entity, the billing entity shall not deny the assertion unless it conducts a reasonable investigation and determines that the goods or services were actually delivered as agreed or that the information was correct. There shall be a rebuttable presumption that goods or services were actually delivered to the extent that a vendor or providing carrier produces documents prepared and maintained in the ordinary course of business showing the date on, and the place to, which the goods or services were transmitted or delivered.

notice of the billing error and before taking any action to collect the disputed amount, or any part thereof. After complying with § 308.7(d)(2), the billing entity shall:

(i) If it is determined that any disputed amount is in error, promptly notify the appropriate providing carrier or vendor, as applicable, of its disposition of the customer's billing error and the reasons therefor; and

(ii) Promptly notify the customer in writing of the time when payment is due of any portion of the disputed amount determined not to be in error, which time shall be the longer of ten (10) days or the number of days the customer is ordinarily allowed (whether by custom, contract or state law) to pay undisputed amounts, and that failure to pay such amount may be reported to a credit reporting agency or subject the customer to a collection action, if that in fact may happen.

(e) *Withdrawal of billing error notice.* A billing entity need not comply with the requirements of § 308.7(d) if the customer has, after giving notice of a billing error and before the expiration of the time limits specified therein, agreed that the billing statement was correct or agreed to withdraw voluntarily the billing error notice.

(f) *Limitation on responsibility for billing error.* After complying with the provisions of § 308.7(d), a billing entity has no further responsibility under that section if the customer continues to make substantially the same allegation with respect to a billing error.

(g) *Customer's right to withhold disputed amount; limitation on collection action.* Once the customer has submitted notice of a billing error to a billing entity, the customer need not pay, and the billing entity, providing carrier, or vendor may not try to collect, any portion of any required payment that the customer reasonably believes is related to the disputed amount until the billing entity receiving the notice has complied with the requirements of § 308.7(d). The billing entity, providing carrier, or vendor are not prohibited from taking any action to collect any undisputed portion of the bill, or from reflecting a disputed amount and related charges on a billing statement, provided that the billing statement clearly states that payment of any disputed amount or related charges is not required pending the billing entity's compliance with § 308.7(d).

(h) *Prohibition on charges for initiating billing review.* A billing entity, providing carrier, or vendor may not impose on the customer any charge related to the billing review, including charges for documentation or investigation.

(i) *Restrictions on credit reporting*—(1) *Adverse credit reports prohibited.* Once the customer has submitted notice of a billing error to a billing entity, a billing entity, providing carrier, vendor, or other agent may not report or threaten directly or indirectly to report adverse information to any person because of the customer's withholding payment of the disputed amount or related charges, until the billing entity has met the requirements of § 308.7(d) and allowed the customer as many days thereafter to make payment as prescribed by § 308.7(d)(3)(ii).

(2) *Reports on continuing disputes.* If a billing entity receives further notice from a customer within the time allowed for payment under § 308.7(i)(1) that any portion of the billing error is still in dispute, a billing entity, providing carrier, vendor, or other agent may not report to any person that the customer's account is delinquent because of the customer's failure to pay that disputed amount unless the billing entity, providing carrier, vendor, or other agent also reports that the amount is in dispute and notifies the customer in writing of the name and address of each person to whom the vendor, billing entity, providing carrier, or other agent has reported the account as delinquent.

(3) *Reporting of dispute resolutions required.* A billing entity, providing carrier, vendor, or other agent shall report in writing any subsequent resolution of any matter reported pursuant to § 308.7(i)(2) to all persons to whom such matter was initially reported.

(j) *Forfeiture of right to collect disputed amount.* Any billing entity, providing carrier, vendor, or other agent who fails to comply with the requirements of §§ 308.7(c), (d), (g), (h), or (i) forfeits any right to collect from the customer the amount indicated by the customer, under § 308.7(b)(2), to be in error, and any late charges or other related charges thereon, up to $50 per transaction.

(k) *Prompt notification of returns and crediting of refunds.* When a vendor other than the billing entity accepts the return of property or forgives a debt for services in connection with a telephone-billed purchase, the vendor shall, within seven (7) business days from accepting the return or forgiving the debt, either:

(1) Mail or deliver a cash refund directly to the customer's address, and notify the appropriate billing entity that the customer has been given a refund, or

(2) Transmit a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. The billing entity shall, within seven (7) business days after receiving a credit statement, credit the customer's account with the amount of the refund.

(l) *Right of customer to assert claims or defenses.* Any billing entity or providing carrier who seeks to collect charges from a customer for a telephone-billed purchase that is the subject of a dispute between the customer and the vendor shall be subject to all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute that the customer could assert against the vendor, if the customer has made a good faith attempt to resolve the dispute with the vendor or providing carrier (other than the billing entity). The billing entity or providing carrier shall not be liable under this paragraph for any amount greater than the amount billed to the customer for the purchase (including any related charges).

(m) *Retaliatory actions prohibited.* A billing entity, providing carrier, vendor, or other agent may not accelerate any part of the customer's indebtedness or restrict or terminate the customer's access to pay-per-call services solely because the customer has exercised in good faith rights provided by this section.

(n) *Notice of billing error rights.*—(1) *Annual statement.* (i) A billing entity shall mail or deliver to each customer, with the first billing statement for a telephone-billed purchase mailed or delivered after the effective date of these regulations, a statement of the customer's billing rights with respect to telephone-billed purchases. Thereafter the billing entity shall mail or deliver the billing rights statement at least once per calendar year to each customer to whom it has mailed or delivered a billing statement for a telephone-billed purchase during the previous twelve months. The billing rights statement shall disclose that the rights and obligations of the customer and the billing entity, set forth therein, are provided under the federal Telephone Disclosure and Dispute Resolution Act. The statement shall describe the procedure that the customer must follow to notify the billing entity of a billing error and the steps that the billing entity must take in response to the customer's notice. If the customer is permitted to provide oral notice of a billing error, the statement shall disclose that a customer who orally communicates an allegation of a billing error is presumed to have provided

sufficient notice to initiate a billing review. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending completion of the billing review. The statement shall further disclose the customer's rights and obligations if the billing entity determines that no billing error occurred, including what action the billing entity may take if the customer continues to withhold payment of the disputed amount. Additionally, the statement shall inform the customer of the billing entity's obligation to forfeit any disputed amount (up to $50 per transaction) if the billing entity fails to follow the billing and collection procedures prescribed by § 308.7 of this rule.

(ii) A billing entity that is a common carrier may comply with § 308.7(n)(1)(i) by, within 60 days after the effective date of these regulations, mailing or delivering the billing rights statement to all of its customers and, thereafter, mailing or delivering the billing rights statement at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, to all of its customers.

(2) *Alternative summary statement.* As an alternative to § 308.7(n)(1), a billing entity may mail or deliver, on or with each billing statement, a statement that sets forth the procedure that a customer must follow to notify the billing entity of a billing error. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending completion of the billing review.

(3) *General disclosure requirements.* (i) The disclosures required by § 308.7(n)(1) shall be made clearly and conspicuously on a separate statement that the customer may keep.

(ii) The disclosures required by § 308.7(n)(2) shall be made clearly and conspicuously and may be made on a separate statement or on the customer's billing statement. If any of the disclosures are provided on the back of the billing statement, the billing entity shall include a reference to those disclosures on the front of the statement.

(iii) At the billing entity's option, additional information or explanations may be supplied with the disclosures required by § 308.7(n), but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict, obscure, or detract attention from the information required to be disclosed. The disclosures required by § 308.7(n) shall appear separately and above any other disclosures.

(o) *Multiple billing entities.* If a telephone-billed purchase involves more than one billing entity, only one set of disclosures need by given, and the billing entities shall agree among themselves which billing entity must comply with the requirements that this regulation imposes on any or all of them. The billing entity designated to receive and respond to billing errors shall remain the only billing entity responsible for complying with the terms of § 308.7(d). If a billing entity other than the one designated to receive and respond to billing errors receives notice of a billing error as described in § 308.7(b), that billing entity shall either: (1) Promptly transmit to the customer the name, mailing address, and business telephone number of the billing entity designated to receive and respond to billing errors; or (2) transmit the billing error notice within fifteen (15) days to the billing entity designated to receive and respond to billing errors. The time requirements in § 308.7(d) shall not begin to run until the billing entity designated to receive and respond to billing errors receives notice of the billing error, either from the customer or from the billing entity to whom the customer transmitted the notice.

(p) *Multiple customers.* If there is more than one customer involved in a telephone-billed purchase, the disclosures may be made to any customer who is primarily liable on the account.

§ 308.8 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§ 308.9 Rulemaking review.

No later than four years after the effective date of this Rule, the Commission shall initiate a rulemaking review proceeding to evaluate the operation of the rule.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–18459 Filed 8–6–93; 8:45 am]

BILLING CODE 6750–01–M

federal register

Monday
August 9, 1993

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 29, 52, 55, 58, 59, 61, 70, 90–159, 180

Agency Reorganization of Analytical Testing Services; Rules

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: Final rule.

SUMMARY: On January 15, 1989, the Agricultural Marketing Service (AMS) of the Department of Agriculture consolidated and transferred functions related to analytical laboratory testing services performed on various agricultural products to its Science Division (formerly Commodities Scientific Support Division). This rule revises AMS regulations by establishing a new subchapter E in title 7 and by amending and transferring regulations concerning laboratory services and the Plant Variety Protection Act to the new subchapter. The regulations are also revised by adding provisions for statistical science support services and residue monitoring operations to the new subchapter E. The fees charged for testing and related services under the various Science Division programs are amended to reflect additional costs associated with the services. As a result of these amendments, AMS regulations related to analytical testing and laboratory services will be consolidated and the entire program will be administered by the Science Division.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Craig A. Reed, Director, Science Division, Agricultural Marketing Service, U.S. Department of Agriculture, PO 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 final 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 fee increases only reflect an increase in costs to the applicants that utilize certain laboratory services.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

II. Effect on Small Entities

The Administrator, Agricultural Marketing Service, has determined that this action will 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 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 rule provides 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, is established to implement the changes. In addition, laboratory testing fees and hourly rates currently specified in parts 52, 55, 58, and 70 are revised, consolidated, and published in a new part 91. Fees pertaining to cottonseed grading and certification in current part 61 remain in 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 remain in 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 part 91, the Agency only needs to amend one part instead of several different parts of the CFR each time the rate for such laboratory test services is revised. This consolidation also results in greater fee uniformity for identical tests and eases the administration of laboratory services and oversight.

New part 90 contains the introduction to subchapter E and provides an overview of the functions and responsibilities of the Science Division. In addition, part 90 contains 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, contains general administrative provisions and definitions.

Part 92 pertaining to tobacco contains definitions, the location of the Science Division laboratory, specific pesticide residues tests, and other types of laboratory testing services. Part 93 contains 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 is 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 describes 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 describes 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 describes the analytical services and the quality control sample program 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 contains 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 describes the mandatory egg product samples that are analyzed for the Poultry Division by appropriated and annually designated funds. Subpart B of this part describes 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 is reserved for the Salmonella Laboratory Recognition Program.

Part 95, Processed Dairy Products, contains 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 also are specified. In addition, part 95 outlines the laboratory quality assurance programs for dairy products that are administered by the Science Division. These programs 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 contains 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 includes 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 includes 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 contains 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 are removed in their entirety and are 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 are made.

Part 98 contains 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 is divided into two subparts: subpart A of this part pertains to meat and meat product procurement testing for school lunch, defense, prison and other feeding programs, and subpart B of this part describes 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 contains 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, provides 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 also renders advice and answers concerning sampling problems through the application of mathematical statistics and computing. Together with other divisions of AMS, the branch establishes uniform testing procedures and develops rapid identification methods for hazardous substances which present an environmental and human health risk.

Part 100 contains administrative details of the Science Division's National Laboratory Accreditation Program once it is implemented. Laboratories are 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 are required to demonstrate sustained acceptable performance through regular testing of interlaboratory proficiency check samples at different chemical residue levels. Part 100 also includes fees for laboratory accreditation to offset the costs of the National Laboratory Accreditation Program (NLAP).

Part 101 is 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 is reserved for Science Division's recordkeeping program for restricted use pesticides by certified applicators. Parts 102–109 and parts 111–159 is reserved for the future SD programs.

V. Basis for 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 rule amends 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 revising the above mentioned hourly rates to $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 rate for appeal, Federal holidays, and overtime laboratory service is 1½ times the base, or $51.30 per hour. These fees would meet the expenses of the Science Division laboratory service programs.

VI. Programs Without Consolidated Fees and Charges

Certain programs administrated by Science Division do 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 analyses 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 is 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 are specified in part 96. The Plant Variety Protection (PVP) schedule of fees remain with the PVP regulations in 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 need 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 do 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 will appear in part 100 and are 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 Pesticides by Certified Applicators (part 110) are 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 January 27, 1988, program operating costs have increased, but revenues from assessed user fees for cottonseed grading have remained the same.

The majority of funds under the cottonseed grading program are obtained from a unit fee assessment 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. Since Fiscal Year (FY) 1989 was a short year of 8½ months for the newly formed Science Division, with $5,609.25 total revenue generated for the cottonseed grading program, all fee increases are based on the income shortfalls after October 1, 1989. The travel expenditures for reviewing the performance of licensed cottonseed chemists, the support service charges, and the cost of preparing and fumigating check samples for proficiency testing have increased since the last increase in

cottonseed grading user fees. The Federal General Schedule salaries and civil service employee benefits have also increased. There are additional contractual costs for samplers oversight, sample selection and shipments. The Agency has determined that due to the aforementioned increases in program operating costs, the program will incur a $49,024 loss in FY 1993. This warrants a unit cost increase per certificate to provide sufficient revenue to balance the expenses of the service. Therefore, the Agency will revise the certificate fee charged for official analysis and cottonseed grade determination from $1.35 per certificate, issued by the chemist, to $3.00. The application fee for a chemist's license will be raised from $360.00 to $1,100.00 for the examination, while the fee for renewal of the license will be increased from $125.00 to $275.00. These substantial increases in licensing fees are also necessary, in part, because of the additional travel costs associated with the relocation of the supervisor of the licensed chemists from the vicinity of the cottonseed laboratories to Washington, DC. The new fees serve to meet the financial obligations of keeping the licensed cottonseed chemist program active.

VIII. Summary and Analysis of Proposal

A proposed rule was published in the Federal Register (58 FR 13130–13171) on March 9, 1993, providing for a 30 day comment period ending April 8, 1993. One comment letter from a national trade association was received. The association opposed the reorganization of the analytical testing services of the Agricultural Marketing Service, USDA. The trade organization expressed concern that the proposed fee increases for the cottonseed certificates and the chemists' licenses (initial and renewal) are not reasonable considering an average inflation rate and the salary increases since the last increase in cottonseed grading user fees in 53 FR 2213 on January 27, 1988. The Agency agrees that salary increases alone would not justify the fee increases. However, there were several other contributing factors that need to be considered as a total expenditure to arrive at the revised fees. These factors include substantial increases in costs for proficiency sample preparation and for fumigating seed. Aluminum phosphide is now used to fumigate cottonseed in place of methyl bromide. This is because aluminum phosphide is much more effective as a fumigant since phosphine gas (hydrogen phosphide) generated from it kills all life stages of pink bollworm (*Pectinophora* spp.) infestation which must be eliminated in order to ship the seed. In addition, since the U.S. Environmental Protection Agency has proposed to classify methyl bromide as a class I ozone-depleting substance, production and consumption of this substance would terminate in the year 2000 (58 FR 15014–15049, March 18, 1993). As a consequence, fumigation costs have risen from $100 to $859 per application. There has been an added contractual cost for the oversight service related to the 56 licensed cottonseed samplers. In FY 1993 there were 27,853 official certificates issued at $1.35 each, accounting for a revenue of $37,602. The outlay for cottonseed sampling supervision for FY 1993 was $15,483, which is 41.2% of the revenue from certificate issuance. There have also been large increases in transportation and shipment costs, travel expenses, mailing and supply expenditures, and support service costs.

For FY 1993 the cottonseed grading program expects to incur total expenses of approximately $89,001 and receive approximately $39,977 in income, leaving an estimated shortfall of $49,024. The new certificate fee of $3.00 for cottonseed grading was determined by distributing the projected FY 1994 net operating costs of $84,425 over 28,000, which is the estimated number of official certificates to be issued for the 1994 season. The projected FY 1994 net operating costs were derived by subtracting the anticipated revenue of $5,225 for 19 chemist license renewals at the new charge of $275 from the expected total expenses of $89,650. In arriving at the new license renewal fee, travel costs, which averaged $3,552 over the last 3 years, were taken into consideration. For new licenses, the $1,100 cottonseed chemist licensing exam fee includes the travel costs for the SD examiner and the expenses for preparing and delivering cottonseed exam samples. Since the Agency needs to have sufficient funds to pay its expenses for the cottonseed grading program, which are incurred on a continuous basis, the revised fees reflecting the current costs associated with the program are determined to be reasonable and acceptable fees. It should be added that the costs for cottonseed grading are voluntary and the secretary is authorized by statute to recover the costs of the services. The fees are needed to continue to provide cottonseed quality grading services at the levels desired by the industry.

IX. Amendments

This rule amends 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 is deleted in its entirety.

X. Discussion of Changes of Regulations

Section 29.500 of part 29 for subchapter A is revised. The following sections of part 52, part 55, part 58, part 59, part 61 and part 70 of the regulations for subchapter C either will be revised or will 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 are removed. The following parts either will be added or will 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 § 94.200), 95, 96, 97, 98 (in part reserved), 99 (reserved except for § 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 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.

REVISION TABLE—Continued

Section(s)	Proposed action
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 (e)(5)(ii) and redesignate paragraph (e)(5)(iii) as (e)(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 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 61.16	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 180.23	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 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 final actions, is provided as a reference aid:

TABLE OF NEW REGULATIONS

Added section(s)	Final 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.

TABLE OF NEW REGULATIONS—Continued

Added section(s)	Final action
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.

XI. Need for Immediate Action

This final rule, as hereinafter set forth, finalizes the provisions of the March 9 proposal. Pursuant to 5 U.S.C. 533, good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** since the fee increases contained herein are needed to adequately fund the various services provided. A comment period was included in the proposed rule with one written comment received. A detailed explanation to the remark is provided above and the proposed rule is adopted as a final rule. No useful purpose would be served by a ruling delay.

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

Cottonseeds, Reporting and recordkeeping requirements.

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

Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Fees and charges, Laboratories.

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 and egg products, Laboratories, Poultry and poultry products.

7 CFR Part 95

Dairy products, Laboratories, Milk.

7 CFR Part 96

Administrative practice and procedure, Cottonseeds, Chemist's licensure, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 97

Administrative practice and procedure, Plant variety and protection, Novel seed variety certification.

7 CFR Part 98

Meat and meat products, Laboratories.

7 CFR Part 99

Agricultural commodities, Statistics.

7 CFR Part 100

Agricultural commodities, Laboratories.

7 CFR Part 101

Agricultural commodities, Pesticides and pests.

7 CFR Part 110

Pesticides and pests, Reporting and recordkeeping requirements.

7 CFR Part 180

Administrative practice and procedure, Labeling, Plants.

For the reasons set out in the preamble, AMS amends 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 is revised to read as follows:

Authority: 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 is revised to read as follows:

Authority: 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 is revised to read as follows:

Authority: 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 it with the phrase "the Science Division Director of the Agricultural Marketing Service".

§61.6 [Amended]

3. Section 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.

§§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 is revised to read as follows:

Authority: 7 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.

2. Subchapter E, consisting of parts 90 through 159, is added to read as set forth below:

SUBCHAPTER E—COMMODITY LABORATORY TESTING PROGRAMS

Table of Parts

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.
91.6 Availability of services.

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 appeal 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 Avenue, SW., 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., 14th & Independence Avenue, SW., 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), PO 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 compromise the quality and validity of 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 the 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
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

TABLE 2.—SINGLE TEST TIMES AND LABORATORY FEES FOR LIPID RELATED ANALYSES—Continued

Type of analysis	Hours for single test	List fee
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

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

Type of analysis	Hours for single test	List fee
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
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

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

Type of analysis	Hours for single test	List fee
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:		
One type sugar from HPLC profile	3	102.60

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

Type of analysis	Hours for single test	List fee
Each additional type sugar	0.5	17.10
Sugars, non-reducing	3	102.60
Sugars, total as invert	2	68.40
Sulfites (qualitative)	0.75	25.65
Sulfur dioxide, Monier-Williams.	1.5	51.30
Sulfur dioxide, direct titration	1	34.20
Toluene, residual	2	68.40
Triethyl citrate, GC (quantitative)	1	34.20
Vitamin A	5	171.00
Vitamin D, HPLC (vitamins D_2 and D_3)	8.5	290.70
Whey protein nitrogen	2.5	85.50
Xanthydrol test for urea	1.5	51.30
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 powders)	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
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	4	136.80

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
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

TABLE 5.—SINGLE TEST TIMES AND LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES—Continued

Type of analysis	Hours for single test	List fee
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, respectively. 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.

TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO THE SAMPLE RECEIPT AND ANALYSIS REPORT

Service description	List charge
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 § 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 in § 91.37 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 in § 91.37 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, PO 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 Divisions 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 § 91.37, or in other sections of this 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 this 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.
92.1 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 dehydrohalogenation process.

DDT. The common abbreviation for Dichloro 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-dichlorobenzoic 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 § 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, or 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 Dichloro-diphenyldichloroethylene (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

Sec.
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.
93.13 Analytical methods.
93.14 Fees for processed fruits and vegetables and related products.

Subpart C—Peanuts, Tree Nuts, Corn and Other Oilseeds

93.100 General.
93.101 Definitions.
93.102 Analyses available and locations of laboratories.
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/acid ratio. The ratio of the degrees Brix of the juice to the grams of anhydrous citric acid per 100 grams of the juice.

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.

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 citric 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, PO 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, PO 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 § 91.37 of this subchapter.

(b) The hourly rate for any requested laboratory analysis not listed shall be the standard rate specified in § 91.37(b) of this subchapter.

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, aflatoxin 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, $1\text{–}OCH_3B_2$, and $1\text{–}CH_3G_2$.

Peanuts. The seeds of the legume *Arachis* hypogaea, and includes both inshell and shelled nuts.

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.).

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 paragraph (b)(1) of this section 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 for 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 of this subchapter.

§ 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 of this subchapter.

(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(b) of this subchapter.

§ 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 of this subchapter.

(b) The charge for any requested laboratory analysis for oilseeds not listed shall be based on the standard hourly rate specified in § 91.37(b) of this subchapter.

PART 94—POULTRY AND EGG PRODUCTS

Subpart A—Mandatory Analyses of Egg Products

Sec.
94.1 General.
94.2 Definitions.
94.3 Analyses performed and locations of laboratories.
94.4 Analytical methods.
94.5 Charges for laboratory service.

Subpart B—Voluntary Analyses of Egg Products

94.100 General.
94.101 Definitions.
94.102 Analyses available.
94.103 Analytical methods.
94.104 Fees and charges.

Subpart C—Salmonella Laboratory Recognition Program

94.200 [Reserved]

Subpart D—Processed Poultry Products

94.300 General.
94.301 Definitions.
94.302 Analyses available and locations of laboratories.
94.303 Analytical methods.
94.304 Fees and charges.

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 *Salmonella* 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 of 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 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 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

§ 94.100 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 be 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 paragraph (a) of § 91.37 of this subchapter.

(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 of this subchapter.

(b) The laboratory analyses for processed poultry products shall result in an additional fee, found in Table 7 of § 91.37 of this subchapter, 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 (b) of this subchapter.

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, PO 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 of this subchapter.

(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, (b) of this subchapter.

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

Scope

Sec.
96.1 General.

Definitions

96.2 Terms defined.

Licensed Cottonseed Chemists

96.3 Application for license as cottonseed chemist; form.
96.4 Examination of applicant.
96.5 Period of license; renewals.
96.6 Conditions in licensing.
96.7 Sustained proficiency; suspension of license of cottonseed chemist.
96.8 Annual review of licensed chemist.
96.9 Fees for grading and certification.
96.10 Records of analyses; inspection of certificate recordkeeping.
96.11 Official and unofficial samples; analyses; certificate.
96.12 Unlicensed persons shall not analyze and certify the grade of official samples.
96.13 Grade certificate; form.
96.14 Reports of licensed chemists.
96.15 Information of violations.
96.16 Licensed chemists; suspension or revocation of license.
96.17 Revoked license to be returned to Division.
96.18 Duplicate license.
96.19 Information on grading to be kept confidential.

Fees and Charges

96.20 Fee for chemist's license.
96.21 Fee for certificates to be paid by licensee to Service.
96.22 Fees for the review of grading of cottonseed.

Subpart B—Official Cottonseed Grade Calculations

96.23 General.
96.24 Definitions, cottonseed quality analysis terms.
96.25 Determination of grade.
96.26 Determination of quantity index.
96.27 Determination of quality index.
96.28 Calculation of grades of official samples.
96.29 Analysis and certification of samples and grades.

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 §§ 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 § 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 of 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 of this subchapter, 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 of this subchapter, 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 a 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 § 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:

Foreign Matter to—0.1 percent
Oil to—0.1 percent
Ammonia to—0.01 percent
Free Fatty Acid, when 5% or under, to—0.1 percent
Free Fatty Acid, when over 5%, to—0.5 percent
Quantity Index to—0.01 percent
Quality Index to—0.1 percent

(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

Scope

Sec.
97.1 General.

Definitions

97.2 Meaning of words.

Administration

97.3 Plant Variety Protection Board.

The Application

97.5 General requirements.
97.6 Application for certificate.
97.7 Statement of an applicant.
97.8 Specimen requirements.
97.9 Drawings and photographs.
97.10 Parts of an application to be filed together.
97.11 Application accepted and filed when received.
97.12 Number and filing date of an application.
97.13 When the owner is deceased or legally incapacitated.
97.14 Joint applicants.
97.15 Assigned novel varieties and certificates.
97.16 Amendment by applicant.
97.17 Papers of completed application to be retained.
97.18 Applications handled in confidence.
97.19 Publication of pending applications.
97.20 Abandonment for failure to respond within the time limit.
97.21 Extension of time for a reply.
97.22 Revival of an application abandoned for failure to reply.
97.23 Voluntary withdrawal and abandonment of an application.
97.24 Assignee.

Examinations, Allowances, and Denials

97.100 Examination of applications.
97.101 Notice of allowance.
97.102 Amendments after allowance.
97.103 Issuance of a certificate.
97.104 Application or certificate abandoned.
97.105 Denial of an application.
97.106 Reply by applicant; request for reconsideration.
97.107 Reconsideration and final action.
97.108 Amendments after final action.

Correction of Errors in Certificate

97.120 Corrected certificate—office mistake.
97.121 Corrected certificate—applicant's mistake.

Reissuance of Certificate

97.122 Certified seed only election.

Sec.
Assignments and Recording
97.130 Recording of assignments.
97.131 Conditional assignments.
97.132 Assignment records open to public inspection.

Marking or Labeling Provisions
97.140 After filing.
97.141 After issuance.
97.142 For testing or increase.
97.143 Certified seed only.
97.144 Additional marking or labeling.

Attorneys and Agents
97.150 Right to be represented.
97.151 Authorization.
97.152 Revocation of authorization; withdrawal.
97.153 Persons recognized.
97.154 Government employees.
97.155 Signatures.
97.156 Addresses.
97.157 Professional conduct.
97.158 Advertising.

Fees and Charges
97.175 Fees and charges.
97.176 Fees payable in advance.
97.177 Method of payment.
97.178 Refunds.
97.179 Copies and certified copies.

Availability of Office Records
97.190 When open records are available.

Protest Proceedings
97.200 Protests to the grant of a certificate.
97.201 Protest proceedings.

Priority Contest
97.205 Definition; when declared.
97.206 Preparation for priority contest between applicants.
97.207 Preparation of priority papers and declaration of priority contest.
97.208 Burden of proof.
97.209 Preliminary statement on novel variety developed in the United States.
97.210 Preliminary statement on novel variety developed in a foreign country.
97.211 Statements sealed before filing.
97.212 Correction of a statement on motion.
97.213 Failure to file statements.
97.214 Access to preliminary statements.
97.215 Dissolution at the request of the Commissioner.
97.216 Concession; abandonment.
97.217 Affidavits and exhibits.
97.218 Matters considered in determining a priority.
97.219 Recommendation by the Commissioner.
97.220 Decision by the Commissioner.
97.221 Status of claims of defeated applicant.
97.222 Second priority contest.

Appeal to the Secretary
97.300 Petition to the Secretary.
97.301 Commissioner's answer.
97.302 Decision by the Secretary.
97.303 Action following the decision.

General Procedures in Priority, Protest, or Appeal Proceedings
97.400 Extensions of time.
97.401 Miscellaneous provisions.
97.402 Service of papers.
97.403 Manner of service.

Review of Decisions by Courts
97.500 Appeal to U.S. courts.

Cease and Desist Proceedings
97.600 Rules of practice.

Public Use Declaration
97.700 Public interest in wide usage.

Publication
97.800 Publication of public variety descriptions.

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, 2402 b, 2403, 2426, 2427, 2501 (c); 29 FR 16210, as amended, 37 FR 6327, 6505; 7 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 employee 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 plant 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;

(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.

[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.

(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 § 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 a 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 §§ 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 § 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 § 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 Corrected 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 revoke 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 §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:

(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 Agricultural 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 other 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

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

TABLE 1.—SCHEDULE ANALYSIS—Continued

Identity	Analyses	Samples tested
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

TABLE 4.—LARD AND TALLOW ANALYSIS—Continued

Type of analysis	Number of samples tested
Specific Gravity	4 to 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 of this subchapter.

(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 of this subchapter, 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., 14th & Independence Ave., SW., 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: 7 U.S.C. 1622, 1624.

§ 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., 14th & Independence Ave., SW., Washington, DC 20250

§§ 101.4–101.999 [Reserved]

PARTS 102 THROUGH 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., 14th & Independence Ave., SW., Washington, DC 20250

PARTS 111 THROUGH 159 [RESERVED]

Dated: July 16, 1993.

Eugene Branstool,

Assistant Secretary,

Marketing and Inspection Services.

[FR Doc. 93–18212 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–02–P

federal register

Monday
August 9, 1993

Part IV

Department of Energy

10 CFR Part 765

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 765

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy, Office of Environmental Restoration and Waste Management, is proposing to amend its regulations by adding a new provision governing reimbursement for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium or thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. Title X of the Energy Policy Act of 1992 requires the Department of Energy to promulgate regulations implementing the requirements of Title X and establishing procedures for eligible applicants to submit claims for, and receive, such reimbursements.

DATES: Comments must be submitted on or before September 23, 1993. The Department of Energy has scheduled a public hearing in Denver, Colorado, beginning at 9:30 a.m. on September 14, 1993.

ADDRESSES: The public hearing will be held at the Holiday Inn-Denver International Airport, 15500 East 40th Avenue, Denver, Colorado 80239 (303/371-9494). Requests to speak at the public hearing and comments on today's proposal should be addressed to Mr. David Mathes, Office of Environmental Restoration and Waste Management, Southwestern Area Programs, U.S. Department of Energy, EM-45/Trevion II Building, Washington, DC 20585-0002. All comments received will be available for public review in the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC, from 9:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Mathes, Office of Environmental Restoration and Waste Management (EM-45), U.S. Department of Energy, (301) 903-7223.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
A. Statutory Authority
B. Background
1. Overview of Uranium Processing Activity Licensed Under the Atomic Energy Act of 1954
2. Overview of Uranium Mill Tailings Radiation Control Act
3. Legislative Background
II. Analysis of Major Issues
A. Determination of Reimbursable Costs
B. Eligible Licensees, Sites, and Quantities of Tailings
C. Verification of Adequacy of Remedial Action
D. Inflation Index Determination
E. Additional Reimbursement at Active Uranium Processing Sites
F. Reimbursement of Costs at the Active Thorium Processing Site
III. Section-By-Section Analysis
A. Subpart A—General
1. § 765.1 Purpose
2. § 765.2 Scope and Applicability
3. § 765.3 Definitions
B. Subpart B—Reimbursement Criteria
1. § 765.10 Eligibility for Reimbursement
2. § 765.11 Reimbursable Costs
3. § 765.12 Inflation Index Adjustment Procedures
C. Subpart C—Procedures for Filing and Processing Reimbursement Requests
1. § 765.20 Reimbursement Request Filing Procedures
2. § 765.21 Processing Reimbursement Requests
3. § 765.22 Appeals Procedures
4. § 765.23 Annual Report
D. Subpart D—Additional Reimbursement Procedures
1. § 765.30 Reimbursement of Costs Incurred in Accordance with Plan for Subsequent Remedial Action
2. § 765.31 Placement of Funds in Escrow for Subsequent Remedial Action
3. § 765.32 Reimbursement of Excess Funds
IV. Opportunity for Public Comment
V. Review Under Executive Order 12291
VI. Review Under the Regulatory Flexibility Act
VII. Review Under the Paperwork Reduction Act
VIII. Review Under the National Environmental Policy Act
IX. Review Under Executive Order 12612
X. Review Under Executive Order 12778

I. Introduction and Background

A. Statutory Authority

Title X of the Energy Policy Act of 1992 (Pub. L. 102-486, the Act), enacted on October 24, 1992, requires the Department of Energy to reimburse certain uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action ("remedial action costs") at active uranium or thorium processing sites, which also includes vicinity properties. Consistent with section 1002 of the Act (42 U.S.C. 2296a-1) the Department has issued this proposed rule to implement the requirements of Title X and establish procedures for eligible applicants to submit claims for, and receive, reimbursement.

Title X provides that, with certain exceptions, remedial action costs at active uranium or thorium processing sites shall be borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954. Title X requires the Department of Energy, however, to reimburse each licensee that owns an active processing site for such portion of these costs as are determined by the Department to be attributable to byproduct material generated as an incident of sales to the United States and either (a) incurred by such licensee not later than December 31, 2002; or (b) placed in escrow and incurred by the licensee in accordance with a plan for subsequent decontamination, decommissioning, reclamation, and other remedial action approved by the Department.

In order to be reimbursable, such costs must be for work that is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) ("Agreement State"). In addition, claims for reimbursement of remedial action costs must be supported by reasonable documentation as determined by the Department of Energy.

Section 1001(b)(2) of Title X [42 U.S.C. 2296a(b)(2)] limits the amount of reimbursement paid to any one licensee of an active uranium mill tailings site to an amount not to exceed $5.50 multiplied by the dry short tons of byproduct material located at the site on October 24, 1992, and generated as an incident of sales to the United States. Total reimbursement, in the aggregate, for work performed at active uranium sites shall not exceed $270 million. Total reimbursement for work performed at the active thorium site shall not exceed $40 million, and is limited to costs incurred for offsite disposal. These aggregate ceilings and the $5.50 per dry short ton limit on reimbursement to individual uranium site licensees shall be subject to annual adjustment for inflation based upon an inflation index chosen by the Department of Energy.

B. Background

1. Overview of Uranium Processing Activity Licensed Under the Atomic Energy Act of 1954

The U.S. Army's Manhattan Engineering District, from 1942 to 1946, and later the Atomic Energy Commission (AEC), from 1947 through 1970, entered several contracts for the purchase of uranium concentrate to

support the Nation's defense programs. Initially, four mills provided uranium for the Army, primarily through reprocessing radium and vanadium mill tailings. Eventually a total of 34 commercially operated mills produced uranium concentrate for sale to the United States Government.

These uranium procurement contracts were for the purchase of an agreed-upon quantity of uranium concentrate. Contract specifications addressed physical characteristics, grade, and impurities but did not include provisions for mill decommissioning, stabilization of tailings piles, or long-term management of the milling-process wastes, known as tailings. When these contracts were executed, the potential hazards of tailings were not fully recognized. Over the ensuing decades, however, potential radiological and chemical hazards associated with uranium and thorium mill tailings were identified and standards and requirements were developed for the control and management of tailings.

The first remedial action program related to uranium mill tailings was authorized by Pub. L. 92–314 on June 16, 1972. This program provided for remedial action for properties contaminated in the vicinity of Grand Junction, Colorado. Because there were no restrictions on access to approximately 4.4 million cubic yards of tailings at Grand Junction, building contractors and individuals used an estimated 300,000 tons of tailings as construction or fill material before the practice was stopped in 1966. Pub. L. 92–314 provided financial assistance to the State of Colorado to limit radiation exposure resulting from the use of uranium mill tailings for construction purposes.

Between 1975 and 1979, the Department of Energy and the Energy Research and Development Administration, successor agencies to the AEC, completed studies of uranium mill sites that had produced uranium concentrate for the AEC, had subsequently ceased operations, and were considered inactive. These studies determined that uranium mill tailings located at these inactive uranium milling sites posed potentially significant health hazards to the public and that a program should be developed to ensure proper stabilization or disposal of these tailings, in order to prevent or minimize radon diffusion into the environment and other related hazards.

2. Overview of Uranium Mill Tailings Radiation Control Act

In November 1978, as a result of these studies, Congress enacted the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). UMTRCA authorizes the Department of Energy to undertake remedial action at "inactive" sites and at vicinity properties contaminated with byproduct material generated at a site. Inactive uranium milling sites are those that were no longer licensed under the Atomic Energy Act on January 1, 1978, and where all or substantially all of the uranium concentrate was produced for the Federal Government. The Department conducts remedial action in coordination with affected States and Indian tribes under cooperative agreements. Remedial action costs are apportioned, on a 90 percent to 10 percent ratio, between the Federal Government and the affected State, respectively. Remedial action costs at sites on Indian lands are paid in full by the Federal Government.

In addition, UMTRCA established a program authorizing the Nuclear Regulatory Commission (NRC) to regulate mill tailings generated during processing operations at "active" processing sites (i.e., sites with active licenses under the Atomic Energy Act on or after January 1, 1978) to ensure sound management of tailings throughout the production, reclamation, and disposal phases.

3. Legislative Background

UMTRCA did not provide for payment of remedial action costs incurred at active uranium processing sites containing piles of commingled tailings generated under Federal contract and for commercial entities. Two reports prepared subsequently for Congress, by the Department of Energy in January 1979[1] and by the General Accounting Office in February 1979,[2] concluded that Federal assistance should be provided to licensees at these sites to address the cost of remediating mill tailings that were generated under contracts with the United States Government.

Congress directed the Department of Energy, through section 213 of Public Law 96–540, to develop a plan for establishing a cooperative program to provide Federal assistance in the stabilization and management of commingled uranium mill tailings generated as an incident of sales to the United States Government. The Department was directed to identify, among other things, the amount of tailings generated under Federal contract at each active site. This determination was to be used to calculate the percentage of such tailings in relation to total tailings at each site, and the corresponding share of Federal assistance appropriate to meet the costs of stabilizing and managing tailings as required by Federal law.

Title X of the Energy Policy Act of 1992 establishes the authority and framework for providing this Federal assistance. The Department of Energy is required to issue regulations governing reimbursement to licensees at active uranium and thorium processing sites for certain costs of remedial action. This proposed rule presents the requirements and procedures under which the Department will implement this reimbursement program.

II. Analysis of Major Issues

A. Determination of Reimbursable Costs

Section 1001(b)(1) of the Act [42 U.S.C. 2296a(b)(1)] authorizes the Department of Energy to determine the portion of remedial action costs, incurred at each active processing site before December 31, 2002, or in accordance with a plan for subsequent remedial action approved by the Department, that are attributable to byproduct material generated as an incident of sales to the United States. Reimbursement may only be made for such portion of the remedial action costs incurred at each site and supported by adequate documentation.

At most active processing sites, byproduct material attributable to the United States is commingled with byproduct material generated for commercial or private parties. These commingled tailings are often consolidated at each site in a single, or a few, tailings pile or piles. Since byproduct material generated as a result of sales to the United States usually was produced prior to that generated as a result of sales to private parties, such Government-related byproduct material is often at the bottom of the pile, covered by layers of byproduct material subsequently generated as an incident of sales to private parties.

Plans for remedial action required pursuant to UMTRCA or Agreement State requirements usually address remediation and stabilization of the entire tailings pile. In addition, these plans usually require that tailings be

[1] "Answers to Questions on Commingled Tailings at Currently Operating Uranium Ore Processing Mills That Produced Uranium Under Atomic Energy Commission Contracts" (Department of Energy, January 29, 1979).

[2] "Cleaning Up Commingled Uranium Mill Tailings: Is Federal Assistance Necessary" (General Accounting Office, EMD–79–29, U.S. Department of Commerce, February 5, 1979).

stabilized in place, rather than moved or disposed of elsewhere. As a result, it often may be impossible to attribute specific costs of remedial action to specific byproduct material in a tailings pile. Instead, many remedial action costs may only be attributable to the entire tailings pile, not discreet portions that can be identified as commercial or Federal-related tailings. In addition, it often may be impossible to attribute specific costs of remedial action to a precise quantity, in tons, of byproduct material.

1. Maximum Reimbursement Amount

Since costs of remedial action attributable to byproduct material generated as an incident of sales to the United States generally cannot be segregated specifically from costs attributable to other byproduct material at the site, the Department of Energy shall provide reimbursement only for that percentage of the costs incurred for remedial action, and approved by the Department, that corresponds to the percentage of total tailings that were generated as an incident of sales to the United States.

The proposed rule provides that remedial action costs may only be attributable to the United States, as specified by Title X, in direct proportion to the percentage, by weight measured in dry short tons, of all tailings at the site that is comprised of Federal-related tailings, as that term is defined in the proposed rule. Accordingly, the proposed rule utilizes this percentage, defined as the Federal reimbursement ratio, to determine a maximum reimbursement amount to which a licensee at each processing site may be eligible. The maximum reimbursement amount for each site will be based on the site's total approved cost of remedial action multiplied by the Federal reimbursement ratio.

As required by section 1001(b)(1) of the Act [42 U.S.C. 2296a(b)(1)], the total approved cost of remedial action will be for costs of "decontamination, decommissioning, reclamation, and other remedial action" as defined by section 1004(3) of the Act [42 U.S.C. 2296a–3(3)]. Such costs (referred to throughout this proposed rule as "remedial action costs") must be for work performed which is necessary to comply with applicable UMTRCA, or Agreement State, requirements. These requirements are incorporated in a site's reclamation plan, or other written authorization conferred by NRC or an Agreement State. Furthermore, such costs must be supported by reasonable documentation and be approved by the Department as specified in today's proposed rule.

For example, if the total approved remedial action cost at a site equals $40 million, and 25 percent of the site's total tailings are Federal-related, then the maximum reimbursement amount to which the licensee could be eligible would be $40 million multiplied by the Federal reimbursement ratio (i.e., 0.25), or $10 million.

One factor may further limit the maximum reimbursement amount at each uranium processing site. As required by section 1001(b)(2)(A) of the Act [42 U.S.C. 2296a(b)(2)(A)], the reimbursement ceiling for each eligible uranium processing site may not exceed $5.50, as increased for inflation, multiplied by the number of dry short tons of tailings present at the site on October 24, 1992, that were generated as an incident of sales to the United States.[3] For example, in the hypothetical case above, if the site had only 1 million tons of Federal-related tailings, the reimbursement ceiling required by the Act would be $5.50 multiplied by 1 million tons, or $5.5 million, instead of $10 million. The Department of Energy requests public comments on this methodology for determining the Federal reimbursement ratio and invites comments on other methodologies which may also be appropriate.

2. Reimbursement Process

Today's proposed rule establishes a two-phase reimbursement process. The first phase consists of any reimbursement to a licensee made prior to the Department of Energy's approval of a plan submitted by that licensee for subsequent remedial action as authorized by section 1001(b)(1)(B)(ii) of the Act [42 U.S.C. 2296a(b)(1)(B)(ii)]. The second phase consists of all reimbursements made subsequent to approval of, and in accordance with, such a plan.

(a) Phase One. Reimbursement made to a licensee in response to each claim for reimbursement submitted in phase one would be limited to the total approved cost of remedial action multiplied by the Federal reimbursement ratio up to $5.50 per dry short ton, as adjusted for inflation. In other words, the Department of Energy would provide reimbursement only for that portion of the costs incurred for remedial action, and approved by the Department, that is derived by multiplying total approved costs by the percentage of Federal-related tailings. For example, if 30 percent of the total tailings present at the site on October 24, 1992, is Federal-related, then 30 percent of the remedial action costs claimed, which are supported by adequate documentation and approved by the Department, would be reimbursed up to an inflation-adjusted ceiling of $5.50 per dry short ton of Federal-related tailings.

(b) Phase Two. The second phase of the reimbursement process would begin in 2003. Claims for reimbursement during the second phase may be submitted only after the licensee's plan for subsequent remedial action has been approved by the Department of Energy. Funds for the reimbursement of projected costs of remedial action would be placed in an escrow account by the Department, as specified by Subpart D of this proposed rule. The proposed rule requires a licensee to prepare and submit for approval a plan for subsequent remedial action at any time after January 1, 2000, but not later than December 31, 2002.

The Department of Energy would use the site's reclamation plan approved by NRC or an Agreement State as the basis of such plan for subsequent remedial action. The plan for subsequent remedial action would adopt all of the remaining requirements concerning remedial action at the site contained in the site's approved reclamation plan. In addition, the plan for subsequent remedial action would include a total cost of remedial action, broken down into actual costs incurred and approved to date, and anticipated future costs. Actual costs would include all those costs for which a claim for reimbursement had been reviewed, approved, and paid by the Department. Anticipated costs would include the estimated costs of work remaining to be completed as required by the site's reclamation plan or other applicable requirements established by NRC or the Agreement State. All necessary supporting documentation would be incorporated into the plan.

Actual costs and anticipated costs would be combined to determine the total cost of remedial action at the site. This total cost would be multiplied by the Federal reimbursement ratio. The result of this equation would be the site's maximum reimbursement

[3] The $5.50 per dry short ton ceiling on individual site reimbursements established by section 1001(b)(2)(A) of the Act is applicable only to work at uranium processing sites. Section 1001(b)(2)(C) of the Act sets a ceiling of $40,000,000 for reimbursement of costs for work at the eligible thorium processing site. Accordingly, the licensee of the eligible thorium processing site shall be reimbursed for remedial action costs otherwise eligible in accordance with the requirements of the Act and this rule, in an amount not to exceed $40,000,000, as adjusted for inflation.

amount.[4] The Department of Energy would authorize funds, not to exceed such maximum reimbursement amount minus any reimbursement previously paid by the Department, to be placed in an escrow account as needed for future reimbursement of remedial action costs incurred in accordance with the plan for subsequent remedial action. Costs incurred in accordance with such plan would be eligible for reimbursement from the funds placed in escrow until such time as such funds have been expended, in accordance with the provisions of Subpart D of this rule. In particular, such costs must be for work approved by NRC or an Agreement State, supported by adequate documentation, and approved by the Department. As in phase one, reimbursement made to a licensee in response to each claim for reimbursement submitted in phase two would be limited to the total approved cost of remedial action multiplied by the Federal reimbursement ratio.

Because of the uncertainties involved in predicting the factual circumstances which may exist during phase two, the Department of Energy may need to issue additional regulations at an appropriate time to govern reimbursements made during this phase.

B. Eligible Licensees, Sites, and Quantities of Tailings

As discussed elsewhere in this preamble, a uranium or thorium licensee[5] at active uranium or thorium processing sites[6] is eligible for reimbursement of costs of remedial action[7] attributable to byproduct material generated as an incident of sales to the United States.

The Department of Energy has reason to believe that each of the following sites may qualify as an active uranium or thorium processing site, as defined under section 1004 of the Act (42 U.S.C. 2296a–3), and that persons license to conduct activities which result or have resulted in the production of byproduct material at these sites may qualify for reimbursement. In addition, the Department has determined that the following quantities of uranium tailings generated as an incident of sales to the United States and total uranium tailings, were present at each site on October 24, 1992, the date of enactment of the Act. The data from which these quantities are derived were first developed for the report entitled "Commingled Uranium-Tailings Study, Volume II: Technical Report," (Department of Energy, June 30, 1982). These data were reviewed, and in some instances updated, in an October 1992 Department report entitled "Integrated Data Base for 1992: U.S. Spent Fuel and Radioactive Waste Inventories, Projections, and Characteristics."[8] These reports are available from the Department of Energy Freedom of Information Reading Room indicated in the "ADDRESSES" section of this notice. Data on estimated thorium tailings have not been confirmed and therefore are not yet available for publication.

	Tailings (millions of dry short tons)	
	Federal-related	Total
Licensee/active uranium site:		
American Nuclear Corporation, Gas Hills Mill Site, (Gas Hills Station, WY)	2.081	5.8
Atlantic Richfield Company, Bluewater Mill Site, (Grants, NM)	8.837	23.9
Atlas Corporation, Moab Mill Site, (Moab, UT)	5.946	10.6
Cotter Corporation, Canon City Mill Site, (Canon City, CO)	0.315	2.3
Dawn Mining Company, Ford Mill Site, (Ford, WA)	1.171	3.1
Homestake Mining Company, Grants Mill Site, (Grants, NM)	11.411	22.4
Pathfinder Mines Corporation, Lucky McMine, (Riverton, WY)	2.842	11.7
Petrotomics Company, Shirley Basin Mill Site, (Shirley Basin, WY)	0.725	6.9
Quivira Mining Company, Ambrosia Lake Mill Site, (Grants, NM)	10.032	33.2
Tennessee Valley Authority, Edgemont Mill Site, (Edgemont, SD)	1.625	2.0
Umetco Mineral Corporation, Uravan Mill Site, (Nucla, CO)	5.701	10.5
Union Carbide Corporation, East Gas Hills Mill Site, (Gas Hills Station, WY)	2.103	8.0
Western Nuclear, Inc., Split Rock Mill Site, (Jeffrey City, WY)	3.347	7.7
Licensee/active thorium site:		
Kerr-McGee Corporation, West Chicago Thorium Mill Site, (West Chicago, IL)	(1)	(1)

[1] Data not available at this time.

The Department of Energy intends to make a final determination regarding the total quantity of tailings, and that portion attributable to the United States, present at each site on October 24, 1992, prior to reviewing or approving any reimbursement claim from such site. Claims from those sites for which a final determination is made will be evaluated individually. The Department will utilize the public notice and comment opportunities associated with this proposed rule to solicit and evaluate data and other input on these issues from interested parties. In particular, the Department requests information from interested parties concerning total quantities of tailings and Federal-related tailings which were present at each site on October 24, 1992; projected schedules for performing and completing remedial action at each eligible site; and estimates of remedial action costs incurred to date, and to be

[4] Such maximum reimbursement amount shall not exceed $5.50 per dry short ton, or other ceiling established by the Department of Energy as necessary to comply with the $270 million cumulative ceiling on uranium reimbursements, multiplied by the dry short tons of Federal-related tailings.

[5] "Licensee" is defined by section 1001 of the Act as a person "licensed under section 62 or 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) for any activity . . . which results or has resulted in the production of byproduct material."

[6] "An active uranium or thorium processing site" is defined by section 1004(1) of the Act as:

(1) any uranium or thorium processing site, including the mill, containing byproduct material for which a license [issued by the Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954, or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)] for the production at such site of any uranium or thorium derived from ore—

(i) Was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978; or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and

(2) Any other real property or improvement on such real property that is determined by the Department of Energy or by a State as permitted under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) to be:

(i) In the vicinity of such site; and

(ii) contaminated with residual byproduct material.

[7] "Costs of remedial action" means costs incurred by a licensee to perform decontamination, decommissioning, reclamation, and other remedial action, which are necessary to perform such action and are supported by reasonable documentation in accordance with the requirements of Subpart C of this rule.

[8] The tailings quantities obtained from this report were converted from metric tons to short tons for the purposes of this rule.

incurred, for which reimbursement may be claimed. The Department solicits this information for budget and other planning purposes. In addition, because there are an estimated 56.11 million dry short tons of Federal-related tailings, the aggregate $270 million statutory ceiling will not support the maximum allowable reimbursement of $5.50 per dry short ton, as established by the Act, if remedial action costs at all, or certain combinations, of the eligible processing sites reach or approach this per ton limit (i.e., $5.50 per dry short ton multiplied by 56.11 million dry short tons equals approximately $309 million). As such, the Department may need to establish a limit below the $5.50 per dry short ton ceiling, established by the Act, on the maximum amount of reimbursement potentially available to each licensee to ensure the equitable distribution of available funds. The Department will utilize data submitted in response to this proposed rule to evaluate the need for such a preliminary limit.

The Department of Energy intends to make a determination as to the amount of tailings present at each active site based on the best available data. The Department will solicit and review data from licensees and other interested parties in order to identify and obtain such data. In this regard, the Department intends to work cooperatively with each licensee to reach a determination on the total quantity of tailings and Federal-related tailings that reflects the most accurate and current information available.

The Department of Energy will notify the public of its determinations regarding quantities of tailings present at each site when the final rule is published, unless the Department is unable to conclude its evaluation of relevant data in time for such publication. In such event, the Department will notify by mail each eligible licensee, and all parties that submitted comments concerning a particular site, of its determination regarding such site. Any dispute concerning a determination by the Department regarding quantities of tailings present at a site would be subject to the appeals procedures specified in § 765.22 of this proposed rule.

C. Verification of Adequacy of Remedial Action

Section 1004(3) of the Act [42 U.S.C. 2256a–3(3)] requires that remedial action costs for which reimbursement is claimed must be for "work . . . necessary to comply with all applicable requirements" of UMTRCA or, where appropriate, with requirements established by a State acting pursuant to the terms of a discontinuance agreement entered with NRC under section 274 of the Atomic Energy Act of 1954.[a]

Work that is necessary to comply with UMTRCA, or applicable Agreement State requirements, is work identified in a site's approved reclamation plan or a license provision or is otherwise required by NRC or an Agreement State consistent with UMTRCA, which results in irreversible remediation as a part of a final closure plan. Accordingly, this proposed rule provides for reimbursement only for work required by such approved plan or license provision, or work otherwise required by NRC or Agreement State consistent with UMTRCA, and conducted in accordance with the terms of such plan, license, or authorization. Since NRC, or the applicable Agreement State, is responsible for ensuring that remedial action is conducted in accordance with such requirements, this proposed rule is linked closely with the existing processes by which NRC or the Agreement State monitor each site.

First, the proposed rule would require licensees to link each cost of remedial action for which reimbursement is claimed to a specific element or activity contained in an approved reclamation plan, or other NRC/Agreement State authorization. This will facilitate the Department of Energy's review of claims and will help to ensure that reimbursement is claimed only for those costs incurred in performing work that was necessary to comply with UMTRCA or Agreement State requirements.

Second, before approving a claim for reimbursement, the Department of Energy would request NRC or the applicable Agreement State to review the claim and provide written concurrence as to those elements of remedial action, for which reimbursement is claimed, that have been conducted in compliance with the requirements of the site's reclamation plan, or other authority, approved or required by NRC or the Agreement State. Such concurrence by NRC or the Agreement State would be a prerequisite for the Department to determine that the work for which reimbursement is claimed was necessary to comply with UMTRCA, or Agreement State, requirements.

Finally, the Department of Energy would use the reclamation plan approved by NRC or an Agreement State as the basis of any plan approved by the Department, pursuant to section 1001(b)(1)(B)(ii) of the Act [42 U.S.C. 2296a(b)(1)(B)(ii)], for subsequent decontamination, decommissioning, reclamation, and other remedial action. Any such plan for subsequent remedial action approved by the Department will adopt the remaining requirements contained in the site's reclamation plan approved by NRC or an Agreement State. Costs incurred by licensees in performing such subsequent remedial action, and approved by the Department, are reimbursable from funds placed in escrow, in accordance with the provisions of Subpart D of this rule. Once all remedial actions have been completed under UMTRCA, the Department intends to issue a Federal Register notice announcing a termination date beyond which claims for reimbursement will no longer be accepted.

D. Inflation Index Determination

Section 1001(b)(2)(D) of the Act [42 U.S.C. 2296a(b)(2)(D)] requires certain specified amounts to be increased annually based upon an inflation index selected by the Department of Energy. One purpose of this provision is to enable each of the three ceilings on reimbursement imposed by the Act to maintain their present day values. Accordingly, in order to prevent any inflationary erosion of the funds set aside for reimbursement, Congress authorized the Department to adjust the following amounts: the $5.50 per dry short ton ceiling established by section 1001(b)(2)(A) of the Act limiting reimbursement to individual uranium site licensees; the $270 million established by section 1001(b)(2)(B) limiting total aggregate reimbursement to uranium site licensees; and the $40 million established by section 1001(b)(2)(C) limiting total reimbursement to the eligible thorium processing site licensee.

The Department of Energy has determined that the appropriate inflation index for this purpose is the consumer price index for all urban consumers (CPI-U) established by the Department of Labor. This determination is based principally on two factors. First, the Uranium Enrichment Decontamination and Decommissioning Fund (the Fund) established under section 1801 of the Atomic Energy Act of 1954, from which reimbursement payments to licensees will be drawn, will itself be adjusted for inflation using the CPI-U. Second, the surety required of active site licensees by NRC pursuant to UMTRCA is also adjusted for inflation using the CPI-U. In order to facilitate a consistent and uniform rate of escalation between the

[a] The States of Colorado, Washington, and Illinois have entered into discontinuance agreements with NRC and are referred to herein as Agreement States.

Fund and that portion of the Fund to be used for reimbursements, as well as develop consistency between the reimbursement program and NRC's surety requirements, the Department proposes that the CPI-U is the appropriate inflation index to be used in the reimbursement program established by Title X of the Act (subject to alternative suggestions received during the comment process).

The amount of $5.50, and any unspent portion of the $270 million authorized for payment of uranium licensees and $40 million authorized for payment of the thorium site licensee, will be adjusted annually, beginning on April 1, 1994, and every April 1 thereafter, until such time as each eligible licensee has been reimbursed for the full amount determined by the Department of Energy to be owed to such licensee. The adjustment will be based on the ratio of the final CPI-U for December of the year in question to the CPI-U for October 1992. In addition, amounts paid to a licensee in previous years will be adjusted annually to determine a cumulative cost per ton ratio in current year dollars. This cumulative cost per ton ratio will be compared with the current year cost per ton ceiling, derived by adjusting for inflation the $5.50 per dry short ton statutory ceiling. The Department of Energy proposes under section 765.12 that the index used for these adjustments will be the annual CPI-U established by the Department of Labor for the preceding calendar year.

E. Additional Reimbursement at Active Uranium Processing Sites

Section 1001(b)(2)(E) of the Act [42 U.S.C. 2296a(b)(2)(E)] requires the Department of Energy to determine, as of July 31, 2005, whether or not excess funds are available to reimburse licensees whose eligible costs exceed the statutory ceiling on reimbursement for individual uranium site licensees of $5.50 per dry short ton of byproduct material generated as an incident of sales to the United States. Specifically, the Department is required to determine whether the $270 million to be appropriated for reimbursement of uranium site licensees "exceeds the amount reimbursable to the licensees" when considering the $5.50 per dry short ton ceiling on reimbursement. In the event the Department determines that excess funds exist, the Department is authorized, but not required, to provide reimbursement in excess of $5.50 per dry short ton to any uranium site licensee whose approved costs of remedial action exceed $5.50 per dry short ton of Federal-related tailings.

As previously discussed, the Department of Energy proposes to determine a maximum reimbursement amount to which each licensee may be eligible based on five requirements. First, reimbursement must be for costs necessary to comply with UMTRCA or applicable Agreement State requirements. Second, reimbursement must be for costs of remedial action "attributable to" Federal-related byproduct material. Third, reimbursement may only be made for such costs that are supported by reasonable documentation confirming that the costs were necessary to comply with applicable requirements. Fourth, a licensee's maximum reimbursement amount cannot exceed the lesser of either the licensee's total approved costs of remedial action multiplied by the licensee's Federal reimbursement ratio or $5.50, as adjusted for inflation, or other per ton ceiling established by the Department as necessary, multiplied by the dry short tons of Federal-related tailings present at the site on October 24, 1992. Fifth, maximum reimbursement may be subject to adjustment on a prorated basis to assure that the aggregate reimbursement to all uranium licensees does not exceed $270 million, as adjusted for inflation. The maximum reimbursement amount will be the sum of all costs satisfying these five requirements, which either have been incurred by the licensee and approved by the Department for reimbursement, or have been approved by the Department in a plan for subsequent remedial action to be incurred in accordance with such plan. In addition, the Department may approve an increase in the maximum reimbursement amount established for any active uranium site to reflect approved remedial action costs incurred in excess of estimated costs contained in the original maximum reimbursement amount. The Department would determine an average per ton cost of remedial action at each site by dividing the site's maximum reimbursement amount by the number of dry short tons of Federal-related tailings. At any uranium processing site where such estimated per dry short ton cost of remedial action exceeds $5.50, the maximum amount for which the licensee may be eligible for reimbursement would be limited initially to $5.50 per dry short ton.

As of July 31, 2005, the Department of Energy would determine if the total of all maximum reimbursement amounts is less than the amount authorized to be appropriated by section 1003 of the Act (42 U.S.C. 2296a–2), as adjusted for inflation. In the event such amount authorized by section 1003 exceeds the total amount reimbursable to uranium site licensees, the Department would then determine if the per dry short ton costs of remedial action at any active uranium processing site have exceeded $5.50. At any such site, the Department may approve an increase in the maximum reimbursement amount to reflect, in whole or in part, the amount by which the per dry short ton remedial action cost exceeded $5.50. In the event additional costs approved for reimbursement by the Department exceeded the amount of funds available for such reimbursement, the Department will provide reimbursement on a prorated basis. Each eligible licensee's prorated share would be determined in the following manner. Total excess funds available will be divided by the total number of tons of Federal-related tailings present at sites where costs of remedial action exceeded $5.50 per dry short ton, as adjusted for inflation. The resulting number would be the maximum cost per ton, over $5.50, that may be reimbursed. Total reimbursement for each licensee that had incurred approved costs of remedial action in excess of $5.50 per dry short ton would be the product of such excess cost per ton multiplied by the number of dry short tons of Federal-related tailings at the site or the actual costs incurred and approved by the Department, whichever is less.

Because of the uncertainties involved in predicting the factual circumstances which may exist at such time, the Department of Energy may issue additional guidance at an appropriate time to govern any reimbursement of such additional costs.

F. Reimbursement of Costs at the Active Thorium Processing Site

This proposed rule reflects the differences and similarities established by the Act between reimbursement of remedial action costs at active uranium sites versus such reimbursement at the active thorium processing site.[10]

Two major differences apply to reimbursement of remedial action costs incurred at the active thorium site. First, section 1001(b)(2)(A) of the Act [42 U.S.C. 2296a(b)(2)(A)] excludes reimbursement of costs at the active thorium site from the $5.50 per dry short ton ceiling, which is applicable only to reimbursement at active

[10] The Department of Energy is aware of only one site that satisfies the Act's definition of an active thorium processing site. This site, known as the West Chicago Thorium Mill Site and located in or near West Chicago, Illinois, is owned by the Kerr-McGee Corporation.

uranium sites. Instead of a per ton ceiling, the Act establishes a $40 million ceiling, adjusted for inflation, on the total reimbursement to be paid to the licensee of the active thorium site. Second, section 1001(b)(2)(C) of the Act provides that reimbursement of the thorium site licensee may only be made for costs incurred for offsite disposal.

In all other significant respects, however, reimbursement paid to the thorium site licensee would be governed by the same requirements applicable to payments made to uranium site licensees. For example, costs incurred at the thorium site must be for work that is necessary to comply with applicable requirements of the licensing agency, which is currently the State of Illinois, an Agreement State. Costs must be attributable to Federal-related byproduct material. Such costs would have to be incurred no later than December 31, 2002, or in accordance with a plan for subsequent remedial action approved by the Department of Energy.

Accordingly, the licensee of the thorium site would be subject to the claim procedures established by Subpart C of this rule. The licensing agency must concur that work for which reimbursement is claimed was necessary to comply with applicable requirements. Work performed after December 31, 2002, must be in accordance with a plan approved by the Department of Energy for subsequent remedial action. All work for which reimbursement is claimed must be for offsite disposal. In addition, reimbursable costs would be limited to the total approved costs multiplied by the Federal reimbursement ratio established for the site until total reimbursement equals the site's maximum reimbursement amount or $40 million adjusted for inflation, whichever is less.

III. Section-By-Section Analysis

A. Subpart A—General

1. Section 765.1 and 765.2 Purpose, Scope, and Applicability

Section 765.1 specifies that the purpose of this proposed rule is to establish procedures and requirements governing the reimbursement of remedial action costs authorized by Title X of the Act. The section confirms that the proposed rule is promulgated as required by section 1002 of the Act (42 U.S.C. 2296a–1).

Section 765.2 describes the general scope and applicability of the proposed rule. In particular, the section provides that reimbursement shall be made to a licensee of an active uranium or thorium processing site for costs of decontamination, decommissioning, reclamation, or other remedial action, which are supported by adequate documentation and determined by the Department of Energy to be attributable to Federal-related byproduct material. Costs of decontamination, decommissioning, reclamation, and other remedial action must be for work that is necessary to comply with the requirements of UMTRCA, or with applicable requirements established by an Agreement State. Moreover, except as provided by § 765.32, reimbursement of a uranium site licensee shall be limited to $5.50, as adjusted for inflation, per dry short ton of Federal-related tailings. The total reimbursement paid to all uranium licensees shall not exceed $270 million, as adjusted for inflation. Reimbursement of the thorium site licensee shall not exceed $40 million, as adjusted for inflation.

2. Section 765.3 Definitions

Section 765.3 defines the acronyms and key terms referenced in this proposed rule. Many of the definitions contained in § 765.3 are taken verbatim, or with minor changes, from the Act, UMTRCA, or the Atomic Energy Act of 1954. Additional definitions were developed specifically for this rule.

The term "claim for reimbursement" is defined as the submission of an application for reimbursement in accordance with the requirements established in Subpart C of this rule.

The term "costs of remedial action" is defined to clarify that such costs must be incurred for decontamination, decommissioning, reclamation, or other remedial action which is necessary to comply with the requirements of UMTRCA or an Agreement State, and must be substantiated by documentation in accordance with the requirements of Subpart C of this rule. Such costs may include, but are not limited to, groundwater remediation, treatment of contaminated soil, disposal of process wastes, removal actions, air pollution studies, mill and equipment decommissioning, site monitoring, administrative expenses directly related to remedial action, and other costs for activities necessary to comply with the requirements of UMTRCA or applicable requirements established by an Agreement State.

The term "dry short ton of byproduct material" is defined as the tailings generated from the extraction and processing of 2,000 pounds of uranium or thorium ore-bearing rock.

As previously discussed, the terms "Federal-related tailings" and "Federal reimbursement ratio" are defined as the tailings attributable to sales to the United States, and the ratio of such tailings to total tailings present at the site on October 24, 1992, respectively.

The term "inflation index" is defined as the consumer price index for all urban consumers (CPI–U) as established by the Department of Labor.

The term "plan for subsequent remedial action" is defined as a plan approved by the Department of Energy, which incorporates an estimated total cost for remedial action and all applicable requirements of remedial action to be performed after December 31, 2002, at an active uranium or thorium processing site.

Finally, "reclamation plan" is defined to clarify that such plan, which outlines the applicable requirements necessary to comply with UMTRCA or applicable Agreement State requirements, must have been approved by NRC or the Agreement State.

B. Subpart B—Reimbursement Criteria

1. Section 765.10 Eligibility for Reimbursement

Section 765.10 outlines the basic eligibility requirements governing reimbursement. In particular, as required by section 1001 of the Act (42 U.S.C. 2296a), § 765.10 specifies that persons licensed under section 62 or section 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) shall be eligible for reimbursement of certain costs of remedial action determined by the Department of Energy to be attributable to byproduct material generated as an incident of sales to the United States. Such reimbursement is subject to further procedures and limitations specified in this rule.

2. Section 765.11 Reimbursable Costs

Section 765.11 defines the parameters within which costs must fall in order to be reimbursable. In order to be reimbursable, costs of remedial action incurred by a licensee must be necessary to comply with applicable requirements of UMTRCA of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) (i.e., an Agreement State). Such requirements are those contained in a reclamation plan, or other written authorization, approved by NRC or an Agreement State as contributing to the irreversible remediation, and final closure, of the site. Reimbursable costs must be incurred prior to December 31, 2002, or be in accordance with a plan for subsequent remedial action approved by

the Department of Energy. Claims for reimbursement must be supported by reasonable documentation as determined by the Department. In addition, costs of remedial action are reimbursable only if they are attributable to Federal-related byproduct material present at the site as of October 24, 1992.

Section 765.11 limits the amount of reimbursement paid to any one licensee of an active uranium mill tailings site to an amount not to exceed $5.50 multiplied by the dry short tons of Federal-related tailings. Total reimbursement, in the aggregate, of uranium site licensees is limited to $270 million. Reimbursement of remedial action costs at the eligible thorium processing site may only be made for costs incurred for offsite disposal, attributable to Federal-related byproduct material, and is limited to $40 million.

3. Section 765.12 Inflation Index Adjustment Procedures

The Act directs the Department of Energy to determine an appropriate inflation index by which to increase annually (1) the $5.50 per dry short ton ceiling on individual reimbursement, (2) any remaining amount of the $270 million available in the aggregate for reimbursement of eligible uranium site licensees, and (3) any remaining amount of the $40 million available for reimbursement of the thorium site licensee. As discussed in section II (D) of this preamble, the Department is proposing the CPI–U as the appropriate inflation index for these adjustments. Section 765.12 of the proposed rule provides that the CPI–U will be used to adjust these amounts annually on April 1 beginning on April 1, 1994, to account for inflation that occurred in the previous calendar year.

C. Subpart C—Procedures for Filing and Processing Reimbursement Requests

Subpart C establishes the procedures for preparing and processing reimbursement claims. These procedures are designed to ensure that all information the Department of Energy needs to review a claim is provided, that claims are evaluated on a consistent basis, and that claims are processed in an efficient and equitable manner.

1. Section 765.20 Reimbursement Request Filing Procedures

Section 765.20 of the proposed rule establishes the filing procedures that must be followed by an applicant when submitting a claim for reimbursement.

Each claim for reimbursement of remedial action costs must be supported by adequate documentation. Such documentation should be submitted in the same shipment, except for additional information requested by the Department of Energy.

Paragraph (c) of § 765.20 specifies the content and format with which reimbursement claims must comply.[11] In particular, a copy of the licensee's approved reclamation plan, or other written authorization from NRC or an Agreement State, must be submitted with the initial claim. Revisions to such plan or authorization must be submitted with the next claim prepared following approval of such revision. All costs for which reimbursement is claimed, and all supporting documentation, must be organized and cross-referenced to such approved plan or other authorization.

All costs for which reimbursement is claimed must be supported by documentation that demonstrates that each cost for which reimbursement is claimed was incurred for a specific activity required by NRC or an Agreement State, the time period in which the cost was incurred, and the portion of such cost attributable to remedial action. Copies of invoices, payroll records, receipts, and other documents should be provided by the licensee to support claims for reimbursement. The Department of Energy strongly urges licensees to provide documents that were prepared contemporaneous to the time the cost which they support was incurred. Documents prepared substantially after the cost was incurred will be considered by the Department in reviewing claims if such documents are the only means available for the licensee to provide adequate documentation to support reimbursement of the cost. The Department will evaluate all documentation submitted in support of a claim for reimbursement on a case-by-case basis and will exercise its discretion in determining the weight to accord to various supporting documents.

Since NRC or an Agreement State must certify that remedial action for which reimbursement is claimed is appropriate to comply with applicable requirements, the Department of Energy anticipates that each licensee will usually submit claims following a site review by NRC or the Agreement State. Nevertheless, in order to allow licensees to submit claims reasonably soon after a site review, and reduce delays in processing claims that would occur if all claims were submitted before a single, annual deadline, the proposed rule provides for semi-annual submittal of claims.

2. Section 765.21 Processing Reimbursement Requests

Section 765.21 outlines the procedures to be followed by the Department of Energy in processing each claim for reimbursement.

Section 765.21 (a) through (e) provides that the Department of Energy will conduct a preliminary review of each claim within 60 days of the claim submittal deadline to determine if all necessary documentation has been submitted. The Department may contact the applicant at any time during this review to request additional information or receive any clarification necessary to continue the review. The Department may formally request the applicant in writing to supply additional documentation or clarification as necessary to enable the Department to complete its evaluation of the claim. In addition, the Department may request an informal conference with the applicant and, if necessary, NRC or an Agreement State, to obtain information or clarification concerning any aspect of a claim. While the applicant is not required to provide additional information or clarification requested by the Department, a failure to do so may result in the denial of that portion of the claim for which information is requested.

The Department of Energy will conduct a final review of the claim, after receiving any additional information requested and prior to making a reimbursement decision. The Department will notify the claimant of its decision regarding a claim within 10 days of completing the final review.

Section 765.21 (f) and (g) discuss the timing for processing for payment reimbursement requests. Reimbursements will be made on a prorated basis if there are insufficient funds available to reimburse all claims in full. Amounts not initially disbursed will be paid on a prorated basis, until satisfied in full, as funds become available. Funds will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund, as required by the Act. Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act as specified by § 765.21(g) of this rule. Following each annual appropriation by Congress, the Department of Energy will issue a

[11] The Department of Energy intends to prepare and distribute a standardized format guide to aid licensees in the preparation of claims. The Department may revise this format from time to time as warranted, based upon experience gained in administering the reimbursement program.

Federal Register notice informing licensees of the availability of funds for reimbursement and whether the Department anticipates that approved claims for that year may be subject to prorated payment. This Federal Register notice will also serve as the Department's official invitation for eligible licensees to submit their claims for reimbursement by the dates specified in the notice. It is the Department's intent to request initial claims on or before February 1, 1994, and beginning in 1995, request claims on a semi-annual basis on or before February 1 or August 1 of each year.

3. Section 765.22 Appeals Procedures

Section 765.22 authorizes a licensee to utilize the established Department of Energy dispute resolution process to appeal decisions that deny, in whole or in part, any claim for reimbursement. The initial decision of the Department becomes final if the decision is not appealed to the Department's Office of Hearings and Appeals (OHA) within 45 days. In the event of an appeal, the OHA decision is the Department's final decision. Appeals of the Department's final determination regarding quantities of Federal-related and total tailings present at a site, and its Federal reimbursement ratio, would also be subject to this process. Appeals are to be filed with the Department's OHA. OHA is a quasi-judicial body that reports to the Secretary of Energy and, except as otherwise provided by law, is responsible for conducting informal adjudicative proceedings of the Department, where there is provision for separation of function. In connection with these duties, OHA holds hearings, receives evidence, develops a record, and issues a final determination, which is subject to review in the Federal courts.

Appeals will be governed by the dispute resolution procedures of OHA set forth in 10 CFR Part 205, Subpart H. Subpart H describes who may file an appeal, the form and content of the appeal, and the dispute evaluation and resolution procedures. The proposed rule would require a claimant to file an appeal because the Department believes that administrative remedies should be exhausted before a claimant could file a petition for review in a Federal Court. This policy would prevent unnecessary litigation. A decision of OHA concerning any such appeal shall be considered a final agency action for purposes of judicial review.

4. Section 765.23 Annual Report

The Department of Energy will prepare an annual report, available to the public, summarizing pertinent information from the preceding year regarding the reimbursement program. Such information may include, but not be limited to, individual and aggregate reimbursement claims approved and paid, approval of plans for subsequent remedial action, completion of particular elements of remedial action at active sites, total amounts paid and remaining for reimbursement, and other information. Licensees should be aware that any information submitted in a claim for reimbursement may be subject to public disclosure, through the annual report as well as by specific request, in accordance with the Freedom of Information Act, and all other applicable requirements.

D. Subpart D—Additional Reimbursement Procedures

1. Section 765.30 Reimbursement of Costs Incurred in Accordance With a Plan for Subsequent Remedial Action

As discussed more fully in section II(E) of this preamble, § 765.30 of Subpart D establishes provisions governing reimbursement of costs incurred in accordance with a plan for subsequent remedial action approved by the Department of Energy. Reimbursement of costs incurred after December 31, 2002, shall be subject to the submission of such a plan by the licensee and approval of the plan by the Department. Licensees seeking reimbursement of costs of remedial action incurred after December 31, 2002, shall submit to the Department for review and approval such a plan at any time between January 1, 2000, and December 31, 2001. A plan must address all applicable requirements remaining to be satisfied, which are contained in a reclamation plan for the site approved by NRC or an Agreement State. In addition, a plan for subsequent remedial action must provide a total estimated cost of remedial action, broken down into costs already incurred by the licensee and approved by the Department, and projected costs to be incurred to satisfy all remaining requirements of the site's approved reclamation plan. Each licensee would be required to provide adequate documentation or other information to support its estimate of costs to be incurred.

The Department of Energy may approve or reject any plan submitted by a licensee. At any time following submittal of a plan, the Department may request additional information from the licensee, and may consult with NRC or an Agreement State concerning remaining remedial action requirements contained in the site's approved reclamation plan. In the event the Department rejects a plan, the licensee may submit additional plans for review by the Department, until such a plan is approved, or until December 31, 2002, whichever occurs first. A failure by a licensee to receive approval from the Department of a plan for subsequent remedial action prior to December 31, 2002, will preclude that licensee from receiving any reimbursement for costs incurred after that date, unless and until such time as the licensee obtains approval from the Department of such a plan.

2. Section 765.31 Placement of Funds in Escrow for Subsequent Remedial Action

Section 765.31 establishes procedures for reimbursement of costs incurred in accordance with an approved plan(s) for subsequent remedial action.

Upon approval of the first plan by the Department of Energy, the Department will authorize to be placed into an escrow account, established and administered by the United States Treasury Department in accordance with requirements specified by the Department of Energy, funds sufficient to reimburse the licensee for costs of remedial action subsequently incurred and approved by the Department of Energy. Funds will be added to the escrow account upon Department of Energy approval of any subsequent plans submitted by other licensees. Placement of funds in such escrow account will be subject to the availability of funds from the Uranium Enrichment Decontamination and Decommissioning Fund established pursuant to section 1801 of the Atomic Energy Act of 1954, and the requirements of the Anti-Deficiency Act.

Costs incurred in accordance with the requirements of a plan for subsequent remedial action, and approved by the Department of Energy, will be reimbursed in an amount equal to the approved cost multiplied by the site's Federal reimbursement ratio, until such time as the Department determines its obligation under Title X to reimburse the licensee has been satisfied or remedial action has been completed at the site.

3. Section 765.32 Reimbursement of Excess Funds

As discussed in section II(E) of this preamble, the Act authorizes the Department of Energy to determine, as of July 31, 2005, whether the amount authorized for reimbursement by section 1003 of the Act (42 U.S.C. 2296a-2) exceeds the amount otherwise

reimbursable to licensees, as limited by the $5.50 per dry short ton reimbursement ceiling on uranium site licensees. In the event any uranium site licensee incurs reimbursable costs in excess of $5.50 per dry short ton, and the Department has determined that excess funds exist as of July 31, 2005, the Department is authorized to provide reimbursement of such costs to the extent funds are available.

Section 765.32 outlines the procedures that will govern such additional reimbursement. In the event further clarification of these procedures becomes necessary, the Department of Energy will issue appropriate guidance.

IV. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting information, opinions, or arguments with respect to the proposed regulations set forth in this notice. Comments should be submitted to the address indicated in the "Addresses" section of this notice and should be identified on the outside of the envelope and on documents submitted to the Department with the designation "Comments on the Title X Proposed Rule." Two copies should be submitted if possible. All comments received by the date indicated in the "Dates" section will be considered by the Department before final action is taken on the proposed rule. Late comments will be considered to the extent practicable. Any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and three copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information and treat it according to its determination.

In addition, the Department of Energy has scheduled a public hearing at the Holiday Inn-Denver International Airport, 15500 East 40th Avenue, Denver, Colorado 80239 (303/371–9494), beginning at 9:30 a.m., on September 14, 1993. Those individuals who wish to present oral comments at this non-evidentiary hearing are encouraged to request in writing an opportunity to be heard. Unless the Department is otherwise requested in writing, individuals will be scheduled 10-minute time segments to present their comments. Time segments will be allotted based on the order in which the written requests are received. Individuals who do not submit a written request to speak will be allowed time to speak as time permits. Written requests should be submitted to the Department official identified in the "Addresses" section of this preamble.

V. Review Under Executive Order 12291

Under Executive Order 12291, agencies are required to determine whether rules are major rules as defined in the order. The Department of Energy has reviewed this proposed rule and has determined that it is not a major rule because: implementing this rule will not have an annual effect of $100 million or more on the economy; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Prior to publication, the proposed rule was submitted to the Director of the Office of Management and Budget pursuant to Executive Order 12291. The Director has concluded his review and concurred with the Department's determination that this is not a major rule.

VI. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Regulatory Flexibility Act requires that a regulatory flexibility analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." This regulation involves reimbursement for costs of remedial action at active uranium and thorium processing sites. The number of potentially eligible applicants is very limited. Because this regulation provides for reimbursement of funds authorized by Title X of the Act, it does not pose any adverse effect on the private sector economy or small entities, and in fact may provide a benefit to small entities located near active processing sites. The Department of Energy, therefore, certifies that this regulation will not have a significant impact on a substantial number of small entities.

VII. Review Under the Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 2501 *et seq.* The final rule will respond to any OMB or public comments concerning the proposed information collection requirements.

VIII. Review Under the National Environmental Policy Act

The Department of Energy has determined that this proposed rule is covered under the Categorical Exclusion found at paragraph A.6 of appendix A to subpart D of 10 CFR part 1021, which applies to establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

IX. Review Under Executive Order 12612

This proposed rule does not have a substantial direct effect on the States, the relationship between the States and the Federal Government, or the distribution of power and responsibilities among various levels of government. No federalism assessment under Executive Order 12612 is required.

X. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation clearly specifies any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The Department of Energy certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

List of Subjects in 10 CFR Part 765

Radioactive materials, Reclamation, Reporting and recordkeeping requirements, Surety bonds, Uranium.

Thomas P. Grumbly,

Assistant Secretary for Environmental Restoration and Waste Management.

For the reasons set out in the Preamble, chapter III of title 10 of the Code of Federal Regulations is proposed

to be amended by adding a new part 765 to read as follows:

Part 765—REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES

Subpart A—General

Sec.
765.1 Purpose
765.2 Scope and Applicability
765.3 Definitions

Subpart B—Reimbursement Criteria

765.10 Eligibility for Reimbursement
765.11 Reimbursable Costs
765.12 Inflation Index Adjustment Procedures

Subpart C—Procedures for Filing and Processing Reimbursement Requests

765.20 Reimbursement Request Filing Procedures
765.21 Processing Reimbursement Requests
765.22 Appeals Procedures
765.23 Annual Report

Subpart D—Additional Reimbursement Procedures

765.30 Reimbursement of Costs Incurred in Accordance with a Plan for Subsequent Remedial Action
765.31 Placement of Funds in Escrow for Subsequent Remedial Action
765.32 Reimbursement of Excess Funds

Authority: Pub. L. 102–486 (42 U.S.C. 2296 and 7254).

Subpart A—General

§ 765.1 Purpose.

The provisions of this part establish regulatory requirements governing reimbursement for certain remedial action costs at active uranium or thorium processing sites as specified by Subtitle A of Title X (Title X) of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776). These regulations are authorized by section 1002 of the Energy Policy Act (42 U.S.C. 2296a-1) which requires the Secretary of Energy (Secretary) to issue regulations governing such reimbursements.

§ 765.2 Scope and applicability.

(a) This part establishes policies, criteria, and procedures governing reimbursement of certain costs of remedial action incurred by uranium or thorium licensees at active uranium or thorium processing sites as a result of byproduct material generated as an incident of sales to the United States.

(b) Costs of remedial action at active uranium or thorium processing sites are borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111), subject to the exceptions and limitations specified in this part.

(c) The Department of Energy shall, subject to the provisions specified in this part, reimburse a licensee described in paragraph (b) of this section that owns an active uranium or thorium processing site for such portion of the costs of remedial action as are determined by the Department to be attributable to byproduct material generated as an incident of sales to the United States and either incurred by such licensee not later than December 31, 2002, or incurred by the licensee in accordance with a plan for subsequent decontamination, decommissioning, reclamation, and other remedial action approved by the Department.

(d) Such costs of remedial action must be necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (42 U.S.C. 7901 *et seq.*) or, in a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), with requirements established by the State pursuant to the authority established by such agreement. Claims for reimbursement must be supported by reasonable documentation as specified in subpart C of this part.

(e) Except as authorized by § 765.32, the total amount of reimbursement paid to any licensee of an active uranium mill processing site shall not exceed $5.50, as adjusted for inflation by applying the consumer price index for all urban consumers (CPI-U) as provided by § 765.12, multiplied by the number of dry short tons of Federal-related tailings located at the site on October 24, 1992.

(f) The total amount of reimbursement paid to all uranium licensees shall not exceed $270 million, as adjusted for inflation by applying the CPI-U as provided by § 765.12.

(g) The total amount of reimbursement paid to any licensee of an active thorium processing site shall not exceed $40 million, as adjusted for inflation by applying the CPI-U as provided by § 765.12.

(h) Reimbursement of licensees for costs of remedial action will only be made for such costs that are supported by reasonable documentation as required by § 765.20 and claimed for reimbursement by a licensee in accordance with the procedures established by subpart C of this part.

§ 765.3 Definitions.

For the purposes of this part, the following terms are defined as follows:

Active uranium or thorium processing site or active processing site means:

(1) Any uranium or thorium processing site, including the mill, containing byproduct material for which a license [issued by NRC or its predecessor agency under the Atomic Energy Act of 1954, or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)] for the production at such site of any uranium or thorium derived from ore—

(i) Was in effect on January 1, 1978;

(ii) Was issued or renewed after January 1, 1978; or

(iii) For which an application for renewal or issuance was pending on, or after January 1, 1978; and

(2) Any other real property or improvement on such real property that is determined by the Secretary or by a State as permitted under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) to be:

(i) In the vicinity of such site; and

(ii) Contaminated with residual byproduct material.

Agreement State means a State that has entered into a discontinuance agreement with NRC under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021).

Byproduct material means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Claim for reimbursement means a claim for reimbursement submitted in accordance with the requirements established in subpart C of this part.

Costs of remedial action means costs incurred by a licensee to perform decontamination, decommissioning, reclamation, and other remedial action, which are necessary to perform such action and are supported by reasonable documentation in accordance with the requirements of subpart C of this part.

Decontamination, decommissioning, reclamation, and other remedial action means work performed which is necessary to comply with all applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.) or, where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021).

Department means the United States Department of Energy.

Dry short tons of byproduct material means the tailings generated from the extraction and processing of 2,000 pounds of uranium or thorium ore-bearing rock.

Federal reimbursement ratio means the ratio of dry short tons of Federal-related tailings to total dry short tons of

tailings present at an active uranium or thorium processing site on October 24, 1992.

Federal-related tailings means tailings that were present at an active uranium or thorium processing site on October 24, 1992, and were generated as incident of uranium or thorium sales to the United States.

Inflation index means the consumer price index for all urban consumers as determined by the Department of Labor.

Licensee means a person licensed under section 62 or section 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) for any activity at an active uranium or thorium processing site which results, or has resulted, in the production of byproduct material.

NRC means the United States Nuclear Regulatory Commission.

Offsite disposal means disposal of byproduct material in a location that is not contiguous to the West Chicago Thorium Mill Site located in West Chicago, Illinois, in accordance with a plan approved by, or other written authorization from, the Illinois Department of Nuclear Safety or appropriate State agency.

Plan for subsequent remedial action means a plan approved by the Department of Energy incorporating an estimated total cost for remedial action, and all applicable requirements of remedial action to be performed after December 31, 2002, at an active uranium or thorium processing site.

Reclamation plan means a plan, which has been approved by NRC or an Agreement State, establishing requirements for cleanup of an active processing site that are necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978, or requirements established by an Agreement State.

Remedial action means decontamination, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site.

Secretary means the Secretary of Energy.

Surety Requirements means the amount of necessary funds, as required by NRC or an Agreement State, that a licensee must possess to cover the estimated cost of conducting all licensed remedial action activities including costs of construction and disposal.

Tailings means the remaining granular material which was disposed of in a tailings impoundment after the extraction of uranium or thorium from ore.

UMTRCA means the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*).

United States means any executive department, commission, or agency, or other establishment in the executive branch of the Federal Government.

Subpart B—Reimbursement Criteria

§ 765.10 Eligibility for reimbursement.

(a) Any licensee that owns an active uranium or thorium processing site and that has incurred costs of remedial action at such site that are attributable to Federal-related byproduct material shall be eligible for reimbursement of such costs, subject to the procedures and limitations specified in this part.

(b) Prior to reimbursement of remedial action costs incurred by a licensee, the Department of Energy shall make a determination regarding the total quantity of tailings, and that portion of such tailings that is Federal-related tailings, present on October 24, 1992, at the active processing site owned by such licensee. The licensee shall concur in such determination, or waive or exhaust its right to any administrative or judicial appeal disputing such determination, prior to submitting any claim for reimbursement of remedial action costs incurred at the site. Claims from those sites for which such determination is made will be evaluated individually.

§ 765.11 Reimbursable costs.

(a) Costs for which an eligible licensee may apply for reimbursement must be for remedial action attributable to Federal-related byproduct material, as determined by the Department of Energy. Such costs must be incurred in the performance of activities contributing to final closure of the site and required by either:

(1) A plan, portion thereof, or other written authorization, approved by NRC pursuant to the authority provided by section 2022(d) of the Atomic Energy Act of 1954 (42 U.S.C. 2021); or

(2) A plan, portion thereof, or other written authorization, approved by an Agreement State, pursuant to the authority provided by a discontinuance agreement with NRC entered pursuant to section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021).

(b) In addition, such costs must either:

(1) Be incurred not later than December 31, 2002; or

(2) Be incurred in accordance with a plan for subsequent remedial action approved by the Department of Energy, as specified in § 765.30.

(c) A licensee seeking reimbursement for costs of remedial action must demonstrate that such costs are attributable to Federal-related byproduct material. For purposes of such demonstration, costs of remedial action that are attributable to Federal-related byproduct material are those costs equal to the total approved costs of remedial action at a site multiplied by the Federal reimbursement ratio established for the site.

(d) Total reimbursement of costs of remedial action incurred at an active processing site, that are otherwise reimbursable pursuant to the provisions of this part, shall be limited as follows:

(1) Reimbursement of remedial action costs to active uranium licensees shall not exceed the lesser of: (i) the actual cost of remedial action multiplied by the Federal reimbursement ratio; or (ii) $5.50 or other per ton ceiling established by the Department of Energy in accordance with the requirements of this part, as adjusted for inflation pursuant to § 765.12, multiplied by the number of dry short tons of byproduct material generated as an incident of sales to the United States.

(2) Aggregate reimbursement of remedial action costs incurred at all active uranium processing sites shall not exceed $270 million; and

(3) Reimbursement of remedial action costs at the active thorium processing site shall be limited to costs incurred for offsite disposal and shall not exceed the actual approved costs of remedial action multiplied by the Federal reimbursement ratio, or $40 million, whichever is less.

(e) Costs of remedial action shall be reimbursable only if supported by adequate documentation and approved by the Department of Energy in accordance with the provisions of this part.

(f) Notwithstanding the requirement that byproduct material must be located at an active processing site on October 24, 1992, remedial action costs attributable to byproduct material generated at the site of the Edgemont Mill in Edgemont, South Dakota, and moved subsequently from such location for disposal, shall be eligible for reimbursement in accordance with all other requirements of this part.

§ 765.12 Inflation index adjustment procedures.

(a) The amounts of $5.50 [as specified in § 765.2(e) or other per ton ceiling established by the Department of Energy, $270 million [as specified in § 765.2(f)], and $40 million [as specified in § 765.2(g)], shall be adjusted for inflation as provided by this section.

(b) The Department of Energy shall multiply $5.50 or other ceiling

established by the Department of Energy, and those portions of $270 million and $40 million that have not yet been paid in reimbursement, by the CPI–U. The Department of Energy shall apply the CPI–U to the amounts specified in this paragraph annually on April 1 of each year, using the CPI–U as determined by the Department of Labor for the preceding calendar year.

(c) The Department of Energy shall adjust annually, using the CPI–U as defined in this part, each amount paid to a uranium site licensee in previous years to determine a cumulative cost per ton ratio in current year dollars for purposes of comparison with the $5.50 per ton ceiling as adjusted for inflation.

Subpart C—Procedures for Filing and Processing Reimbursement Requests

§ 765.20 Reimbursement request filing procedures.

(a) All remedial action costs for which reimbursement is claimed must be supported by adequate documentation as specified in this subpart. The Department of Energy reserves the right to deny any claim for reimbursement, in whole or in part, that is not submitted in accordance with the requirements of this subpart.

(b) Except if requested by the Department of Energy as provided by § 765.21, all documentation in support of a reimbursement claim must be submitted at the same time in the same shipment. If a claimant determines it will be unable to submit all documentation in the same shipment, the claimant shall provide written notice to the Department prior to any submittal of documentation. The claimant should specify the reasons for this action and describe the type of documentation to be sent at a later date, including the estimated date of shipment. The Department may, at its discretion, require the claimant to withhold the original shipment until all documentation can be sent to the Department at one time.

(c) Each claim submitted must be consistent with the format and content prescribed by this paragraph.

(1) The claimant shall provide a copy of the approved site reclamation plan, or other authorization from NRC or an Agreement State, with the initial claim submitted. Any revisions or modifications made to such plan and approved by NRC or an Agreement State shall be included by the licensee in the next claim submitted to the Department of Energy following such revision or modification. Such reclamation plan, as modified or revised, shall serve as the basis for the Department's evaluation of all claims for reimbursement submitted by a licensee.

(2) The licensee shall organize and cross-reference all supporting documentation submitted in support of any claim to specific requirements or activities included in the reclamation plan. All documentation submitted must be individually coded and cross-referenced by page and activity to the licensee's reclamation plan.

(3) The licensee shall provide with each claim submitted a summary of the claim outlining all costs of remedial action for which reimbursement is claimed. This summary shall identify the costs of remedial action associated with each major activity or requirement established by the site's reclamation plan.

(4) Documentation provided to support a reimbursement claim must demonstrate that the costs of remedial action for which reimbursement is claimed were incurred specifically for activities specified in the site's reclamation plan, or otherwise authorized by NRC or an Agreement State as contributing to final closure of the site. Claims will be reviewed by the Department of Energy to assure that costs are consistent with the surety requirements provided by the licensee.

(i) Documentation prepared contemporaneous to the time the cost was incurred should identify the date or time period for which the cost was incurred; the activity; and the reclamation plan provision or other authorized requirement to which the cost relates. Each claim should be supported by photocopies of original receipts, invoices, pay records, or other documents that substantiate that each specific cost for which reimbursement is claimed was incurred for an activity that was necessary to comply with UMTRCA or applicable Agreement State requirements.

(ii) Documentation not prepared contemporaneous to the time the cost was incurred, or not directly related to activities specified in the plan, should not be provided unless the claimant determines such documentation is the only means available to document costs for which reimbursement is sought. The Department of Energy will evaluate such documents on a case-by-case basis and may approve, approve in part, or deny reimbursement for costs not supported by contemporaneously prepared documentation, as considered appropriate by the Department.

(5) The licensee shall utilize generally accepted accounting practices consistently throughout the claim. Such accounting principles, underlying assumptions, and any other information necessary for the Department of Energy to evaluate the claim shall be set forth in each claim.

(6) The licensee should submit to the Department of Energy in writing any questions regarding the type or format of documentation required to be submitted. Such questions should be submitted as soon as practicable to facilitate preparation of complete applications.

(d) Following each annual appropriation by Congress, the Department of Energy will issue a **Federal Register** notice informing licensees of the availability of funds for reimbursement and whether the Department anticipates that approved claims for that year may be subject to prorated payment. This **Federal Register** notice will also serve as the Department's official invitation for eligible licensees to submit their claims by the dates specified in the notice. It is the Department's intent that initial claims for reimbursement, with accompanying documentation, may be submitted to the Department on or before February 1, 1994, and subsequent claims may be submitted to the Department on a semi-annual basis on or before February 1 or August 1, beginning in 1995. Such claims may request reimbursement for any incurred costs of remedial action, otherwise eligible for reimbursement under this part, and for which reimbursement has not previously been approved or denied by the Department.

(e) A licensee shall certify, with respect to any claim submitted by it for reimbursement, that the work was completed as described in an approved reclamation plan or other authorization and that a quality assurance program sufficient to ensure the adequacy of the reclamation construction was implemented. In addition, the licensee shall certify that all costs for which reimbursement is claimed, all documentation submitted in support of such costs, and all statements or representations made in the claim are complete, accurate, and true. Such certification shall be signed by an officer or other official of the licensee with knowledge of the contents of the claim and authority to represent the licensee in making such certification.

(f) All claims for reimbursement submitted to the Department of Energy shall be sent by registered or certified mail, return receipt requested.

§ 765.21 Processing reimbursement requests.

(a) The Department of Energy shall conduct a preliminary review to determine the completeness of each

claim submitted in accordance with the requirements of § 765.20. For the claims submitted on or before February 1, 1994, the Department shall complete a preliminary review as soon as practicable following receipt of such claims. For claims submitted after such date, the preliminary review will be completed within 60 days of the applicable deadline for submitting such claims.

(b) After completing the preliminary review specified in paragraph (a) of this section, the Department of Energy may request the claimant to provide additional documentation or clarification determined by the Department to be necessary to complete its evaluation of the claim. Any additional information requested by the Department, if provided, must be submitted by the claimant within 60 days of receipt of such request unless the Department specifies in writing that additional time is provided.

(c) At any time during the review of a claim, the Department of Energy may request an informal conference with a claimant or with NRC or an Agreement State to obtain further information or clarification on any unresolved issue pertaining to the claim. While the applicant is not required to provide additional clarification requested by the Department, a failure to do so may result in the denial of that portion of the claim for which information is requested.

(d) Upon receiving any additional documentation requested and submitted in accordance with the provisions of paragraph (b) of this section, the Department of Energy shall complete a final review of all submitted information prior to making a reimbursement decision. As a part of this final review, the Department shall request from NRC or an Agreement State written certification that the activities for which reimbursement is claimed and certified by the licensee as being factually correct are substantially in conformance with the licensee's approved reclamation plan. The Department shall not provide reimbursement for costs incurred for any activity for which such concurrence is not received.

(e) A written decision regarding the Department of Energy's determination to approve, approve in part, or deny a claim will be provided to the applicant within 10 days of completion of the final review.

(f) All reimbursements approved by the Department of Energy in a given review cycle, as specified in the **Federal Register** notice described in § 765.20(d), will be processed at the same time for payment in accordance with the requirements governing disbursements from the Uranium Enrichment Decontamination and Decommissioning Fund (referred to in this section as the 'Fund') established pursuant to section 1801 of the Atomic Energy Act of 1954. In the event the Department of Energy determines that insufficient funds are available at any time to provide for complete payment of all outstanding approved claims, reimbursements of approved claims will be made on a prorated basis. The Department shall provide annual notice of congressional appropriation levels and any anticipated short fall between funds available and the expected claims for reimbursement, as specified in § 765.20(d). Any portion of an approved claim for which reimbursement was not made due to insufficient funds shall be paid in full at such time as funds become available.

(g) Notwithstanding the provisions of paragraph (f) of this section, or any other provisions of this part, any requirement for the payment or obligation of funds by the Department of Energy established by this part shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

§ 765.22 Appeals procedures.

(a) Any licensee that wishes to contest a determination made by the Department of Energy concerning the total quantity of tailings or Federal-related tailings present at a site, or the Federal reimbursement ratio applicable to such site, shall invoke the appeals process specified in § 765.22(c) and (d).

(b) Any licensee that has submitted a claim that has been denied, in whole or in part, that chooses to appeal such denial, shall invoke the appeals process specified in § 765.22(c) and (d).

(c) A licensee shall file any appeal with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(d) Any appeal must be filed within 45 days from the date the licensee was notified of the denial, in whole or in part, of a claim [as described in § 765.23(b)] or a quantity or ratio determination [as described in § 765.23(a)]. Appeals will be governed by, and must comply in full with, the procedures set forth in 10 CFR part 205, subpart H. The decision of the Office of Hearings and Appeals shall be the final decision of the Department.

§ 765.23 Annual report.

The Department of Energy shall prepare annually a report summarizing pertinent information concerning claims submitted in the previous calendar year, the status of the Department's review of such claims, determinations made regarding such claims, amounts paid for claims approved, and other relevant information concerning this reimbursement program. The report will be available to all interested parties upon written request to the Department and will also be available in the Department's Freedom of Information Reading Room, 1000 Independence Avenue SW., Washington, DC.

Subpart D—Additional Reimbursement Procedures

§ 765.30 Reimbursement of costs incurred in accordance with a plan for subsequent remedial action.

(a) This section establishes procedures governing remedial action costs incurred in accordance with a plan for subsequent remedial action approved by the Department of Energy as provided in this section. Costs otherwise eligible for reimbursement in accordance with the terms of this part and incurred in accordance with such plan shall be reimbursed in accordance with the provisions of this subpart D and subpart C. In the event there is an inconsistency between the requirements of this subpart D and subpart C, the provisions of subpart D shall govern reimbursement of such costs.

(b) At any time after January 1, 2000, but in no event later than December 31, 2001, a licensee to which the full reimbursement authorized under § 765.11 has not been made may submit to the Department of Energy a plan for subsequent remedial action. Reimbursement of costs incurred after December 31, 2002, shall be subject to the submission of such a plan by the licensee and approval by the Department. Such plan shall include:

(1) All applicable requirements established by NRC pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, or by an Agreement State, that are included in a reclamation plan approved by NRC or an Agreement State, and that have not yet been satisfied in full by the licensee.

(2) The total cost of remedial action required at the site, together with all necessary supporting documentation, segregated into actual costs incurred to date and anticipated future costs. Actual costs incurred to date shall be all those costs for which claims for reimbursement have been reviewed and approved by the Department of Energy

Anticipated costs shall be the estimated cost of remedial action to be completed as required by an approved reclamation plan for the site authorized by NRC or the Agreement State. Such estimated costs shall identify the costs of remedial action associated with each activity or requirement contained in the plan for subsequent remedial action. Claims will be reviewed by the Department to assure that costs are consistent with the surety requirements provided by the licensees to NRC or an Agreement State.

(c) The Department of Energy shall review the plan for subsequent remedial action submitted by each licensee and shall approve, approve with modifications, or reject such plan. At any time during such review, the Department may request additional information from the licensee to clarify or provide support for any provision or estimate contained in such plan. The Department may also consult with NRC or an Agreement State concerning any provision or estimate contained in such plan. Upon approval, approval with modifications, or rejection of a plan, the Department shall inform the licensee of such decision and provide an explanation of the basis for such action.

(d) In the event the Department of Energy rejects a plan for subsequent remedial action submitted by a licensee, the licensee may prepare and submit a new plan within 120 days of receiving notice of the plan's rejection. The Department shall review and approve, approve with modifications, or reject the new plan in accordance with paragraph (c) of this section. The licensee may continue to submit additional plans for subsequent remedial action in accordance with the provisions of this section until such time as the Department approves such a plan, or December 31, 2002, whichever occurs first. A failure by a licensee to receive approval from the Department of such a plan prior to December 31, 2002, will preclude that licensee from receiving any reimbursement for costs of remedial action incurred after such date, unless and until such time as the licensee obtains approval from the Department of such a plan.

(e) The Department of Energy shall determine, in approving a plan for subsequent remedial action, the maximum reimbursement amount for which the licensee may be eligible. This maximum reimbursement amount shall be the smaller of the following two quantities: (1) The amount obtained by multiplying the total cost of remedial action at the site, as determined in the approved plan for subsequent remedial action, by the Federal reimbursement ratio established for such site; or (2) $5.50, as adjusted for inflation, per dry short ton multiplied by the quantity of Federal-related tailings. The Department shall subtract from such maximum reimbursement amount any reimbursement already approved to be paid to the licensee. The resulting sum shall be the potential additional reimbursement to which the licensee may be entitled.

§ 765.31 Placement of funds in escrow for subsequent remedial action.

(a) Upon approval of the first plan for subsequent remedial action, the Department of Energy shall establish an escrow account, subject to the availability of funds, with and administered by the United States Treasury Department in accordance with requirements established by the Department of Energy. Funds will be added to the escrow account upon Department of Energy approval of any subsequent plans submitted by other licensees. The Department of Energy shall authorize reimbursement of costs of remedial action, incurred in accordance with an approved plan for subsequent remedial action and approved by the Department of Energy as specified by subpart C of this part, to be made from such escrow account.

(b) All reimbursable costs under § 765.11 are payable in full from the funds placed in escrow. The Department of Energy's reimbursement of these costs is contingent upon the availability of funds as specified in § 765.21. These costs are reimbursable until: (1) This remedial action has been completed, or (2) The licensee has been reimbursed its maximum reimbursement amount as determined by the Department pursuant to paragraph (e) of § 765.30.

(c) A licensee shall submit any claim for reimbursement of costs incurred in accordance with an approved plan for subsequent remedial action in accordance with the requirements of subpart C. The Department of Energy shall review and approve, approve in part, or deny any such claims in accordance with the procedures specified in subpart C. The Department shall authorize the withdrawal of funds placed in the escrow account upon approval of any such claim for reimbursement.

(d) After all remedial actions have been completed by affected Agreement State or NRC licensees, the Department of Energy will issue a **Federal Register** notice announcing a termination date beyond which claims for reimbursement will no longer be accepted.

§ 765.32 Reimbursement of excess funds.

(a) No later than July 31, 2005, the Department of Energy shall determine if the funds authorized for appropriation pursuant to section 1003 of the Energy Policy Act of 1992 (42 U.S.C. 2296a–2), as adjusted for inflation pursuant to § 765.12, exceed, as of that date, the combined total of all reimbursements which have been paid to licensees under this part, any amounts approved for reimbursement and owed to any licensee, and any anticipated additional reimbursements to be made in accordance with any approved plans for subsequent remedial action.

(b) In the event the Department of Energy determines that funds authorized pursuant to section 1003 of the Energy Policy Act [42 U.S.C. 2296a–2), as increased for inflation, exceed the combined total of all reimbursements [as indicated in paragraph (a) of this section], the Department may establish procedures for providing additional reimbursement to a licensee for eligible remedial action costs. In the event such excess funds are insufficient to provide reimbursement of all eligible costs of remedial action, reimbursement of eligible costs shall be paid on a prorated basis.

(c) Each eligible licensee's prorated share will be determined by dividing the total excess funds available by the total number of tons of Federal-related tailings present at sites where costs of remedial action exceed $5.50 per dry short ton, as adjusted for inflation pursuant to § 765.12. The resulting number will be the maximum cost per ton, over $5.50, that may be reimbursed. Total reimbursement for each licensee that has incurred approved costs of remedial action in excess of $5.50 per dry short ton will be the product of such excess cost per ton multiplied by the number of dry short tons of Federal-related tailings at the site or the actual costs incurred and approved by the Department of Energy, whichever is less.

(d) Any costs of remedial action for which reimbursement is sought from excess funds determined by the Department of Energy to be available is subject to all requirements of this part except the per ton limit on reimbursement established by paragraph (d) of § 765.11.

[FR Doc. 93–18856 Filed 8–6–93; 8:45 am]
BILLING CODE 6450-01-P

federal register

Monday
August 9, 1993

Part V

Environmental Protection Agency

40 CFR Part 261

Final Regulatory Determination on Four Large-Volume Wastes From the Combustion of Coal by Electric Utility Power Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[530-Z-93-009; FRL-4689-8]

Final Regulatory Determination on Four Large-Volume Wastes From the Combustion of Coal by Electric Utility Power Plants

AGENCY: Environmental Protection Agency.

ACTION: Final regulatory determination.

SUMMARY: Today's action presents the Agency's final regulatory determination required by Section 3001(b)(3)(C) of the Resource Conservation and Recovery Act (RCRA) on four large-volume fossil-fuel combustion (FFC) waste streams—fly ash, bottom ash, boiler slag, and flue gas emission control waste—studied in the Agency's February 1988, *Report to Congress: Wastes from the Combustion of Coal by Electric Utility Power Plants* (RTC). EPA has concluded that regulation under Subtitle C of RCRA is inappropriate for the four waste streams that were studied because of the limited risks posed by them and the existence of generally adequate State and Federal regulatory programs. The Agency also believes that the potential for damage from these wastes is most often determined by site- or region-specific factors and that the current State approach to regulation is thus appropriate. Therefore, the Agency will continue to exempt these wastes from regulation as hazardous wastes under RCRA Subtitle C. However, EPA believes that industry and the States should continue to review the appropriate management of these wastes. EPA will consider these wastes during the Agency's ongoing assessment of industrial non-hazardous wastes under RCRA Subtitle D.

EPA plans to make a final regulatory determination on the remaining FFC waste streams (beyond the four listed above) subject to Section 3001(b)(3) of RCRA by April 1, 1998.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: For further information on the regulatory determination, contact the RCRA/Superfund hotline at (800) 424-9346 or (703) 412-9810, or Patti Whiting at (703) 308-8421.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Statutory Authority
B. History of the Combustion Waste Exclusion
C. Overview of the Report to Congress
1. Scope of the Report
2. Study Factors
3. Preliminary Findings
a. Large-Volume Wastes
b. Low-Volume Wastes
c. Waste Utilization
4. Public Comment Process
D. Supplemental Analysis and Notice of Data Availability
II. Scope of the Regulatory Determination
A. As-Generated Large-Volume Wastes
B. As-Managed Large-Volume Wastes
III. Factors Considered in Making the Regulatory Determination
IV. Regulatory Determination for Four Large-Volume Coal-Fired Utility Wastes
V. Regulatory Flexibility Act
VI. Regulatory Determination Docket
Appendix A—Analysis of and Responses to Public Comments on the Report to Congress
Appendix B—Analysis of and Responses to Public Comments on the Notice of Data Availability

I. Background

A. Statutory Authority

Today's notice is issued under the authority of Section 3001(b)(3)(C) of RCRA, which requires that after completion of the Report to Congress mandated by Section 8002(n) of RCRA, the Administrator must determine whether Subtitle C regulation of fossil fuel combustion wastes is warranted.

B. History of the Combustion Waste Exclusion

In December 1978, EPA proposed the first regulations to implement Subtitle C of RCRA. At that time, the Agency recognized that certain large-volume wastes, including wastes from the combustion of fossil fuels, might warrant special treatment. However, the Agency had very little information regarding the nature of and risks posed by these large-volume wastes. Additionally, the Agency had no data on the costs and effectiveness of technologies for managing these wastes. In light of these uncertainties, EPA proposed a limited set of regulations for the management of these wastes (43 FR 58946, 59015, December 18, 1978).

On May 19, 1980, EPA promulgated the initial regulations implementing Subtitle C. By then, however, Congress was debating RCRA reauthorization and both Houses had passed bills restricting EPA's authority to regulate large-volume wastes under Subtitle C of RCRA. Anticipating the enactment of legislation amending RCRA Section 3001, EPA excluded fossil fuel combustion wastes from these regulations (45 FR 33084, 33089, May 19, 1980).

In October 1980, Congress passed the Solid Waste Disposal Act Amendments. Among other things, the amendments temporarily exempted from regulation as hazardous wastes certain large-volume wastes generated primarily from the combustion of coal or other fossil fuels (RCRA Section 3001(b)(3)(A)(i)). These large-volume wastes include fly ash waste, bottom ash waste, boiler slag waste, and flue gas emission control (or flue gas desulfurization) waste. In RCRA Section 8002(n), Congress directed EPA to conduct a detailed and comprehensive study based on eight study factors (discussed in detail below) and to submit a Report to Congress on "the adverse effects on human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste, and other byproduct materials generated primarily from the combustion of coal or other fossil fuels."

Finally, in RCRA Section 3001(b)(3)(C), Congress directed that within 6 months of submitting the report, EPA must, after public hearings and opportunity for comment, decide whether regulation of the management of the temporarily exempt FFC wastes as hazardous wastes under Subtitle C is warranted. Once the decision is made, the Administrator must publish the Agency's regulatory determination in the **Federal Register**.

In 1981, EPA provided an interpretation of the RCRA regulations regarding the exclusion of fossil-fuel combustion wastes from regulation under Subtitle C[1]. EPA stated that, pending the results of the Report to Congress, the Agency would interpret the following to be exempt from RCRA Subtitle C pending further study: (1) Fly ash, bottom ash, boiler slag, and flue gas emission control wastes resulting from: the combustion solely of coal, oil, or natural gas, the combustion of any mixture of these fossil fuels, and the combustion of any mixture of coal and other fuels[2] where coal makes up at least 50 percent of the mixture, and (2) wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that have been and are mixed with and co-disposed or co-treated with fly ash, bottom ash, boiler slag, or flue gas emission control wastes from coal combustion.

RCRA was amended again in 1984 by the Hazardous and Solid Waste Amendments (HSWA) (Pub. L. No. 98-616, 98 Stat. 3221). These amendments

[1] Letter from G. Dietrich, U.S. EPA, to P. Emler, Utility Solid Waste Activities Group, January 13, 1981, Report to Congress: Wastes from the Combustion of Coal by Electric Utility Power Plants, February 1988, Appendix A.

[2] See discussion below on page 10.

added Section 3004(x), which gave EPA the flexibility to promulgate regulations under Subtitle C that considered the unique characteristics of some large-volume wastes, including FFC wastes. Specifically, if EPA determined that some or all of the wastes from fossil-fuel combustion should be regulated as hazardous waste, it could modify certain HSWA requirements to take into account the special characteristics of the wastes, the practical difficulties of implementing the standards, and site-specific characteristics, as long as the modifications still protected human health and the environment.

In February 1988, EPA submitted its Report to Congress: Wastes from the Combustion of Coal by Electric Utility Power Plants, as required under RCRA Section 8002(n). Because coal-fired electric utilities generate a large majority of all fossil-fuel combustion wastes, the RTC focused on wastes generated by coal-fired electric utilities. The document does not address wastes generated by utilities burning other fossil fuels or wastes from non-utility boilers burning any type of fossil fuel (the Agency deferred study of these waste streams until a later date). The report provided the Agency's analysis of available data considering the eight study factors listed in Section 8002(n) of RCRA and presented the Agency's tentative determination regarding large-volume wastes from coal-fired electric utilities. Following the release of the RTC, the Agency provided a notice and comment period that extended through May 16, 1988, and held a public hearing in Denver, Colorado, on April 26, 1988. Appendix A summarizes the comments received on the RTC.

Because of other priorities, the Agency did not publish the regulatory determination for fossil-fuel combustion wastes within the timeframe established in Section 3001(b)(3)(C). As a result, a suit was filed on behalf of the Bull Run Coalition (an Oregon citizens group), with the Edison Electric Institute intervening as plaintiffs.[3] On June 30, 1992, the Agency entered into a Consent Decree that established a schedule for the Agency to complete the regulatory determinations for all fossil-fuel combustion wastes. The Consent Decree divides FFC wastes into two categories: (1) Fly ash, bottom ash, boiler slag, and flue gas emission control waste from the combustion of coal by electric utilities and, (2) all remaining wastes subject to RCRA Sections 3001(b) and 8002(n). Separate schedules are provided in the Consent Decree for each category of waste.

In accordance with the requirements of the Consent Decree, the Agency notified the parties to the litigation on December 1, 1992, that a regulatory determination for fly ash, bottom ash, slag, and flue gas emission control waste from the combustion of coal by electric utilities would be made by August 2, 1993. For the remaining FFC wastes, the Agency indicated that further study was required and that a regulatory determination would be completed for these wastes by April 1, 1998.

In preparing the regulatory determination, EPA collected and reviewed recent information on wastes from coal-fired electric utility power plants. On February 12, 1993, EPA published a Notice of Data Availability in the **Federal Register**, soliciting comments on these data (58 FR 8273). In the notice, EPA also requested comments on a proposed methodology to be used in making the final regulatory determination. This three-step analytical approach was recently used in making the June 13, 1991, regulatory determination for special wastes from mineral processing (56 FR 27300). Comments on the newly available data and on the proposed methodology are discussed in Appendix B of today's notice.

Today's decision is based on the RTC and the data and analyses that underlie the report, comments on the RTC, supplemental information gathered after the RTC, and comments on that newly available information.

C. Overview of the Report to Congress

1. Scope of the Report

EPA published the RTC in 1988. The RTC documents EPA's study of special wastes from coal-fired utilities temporarily excluded from regulation under RCRA Subtitle C. EPA did not include within the scope of the RTC oil- and gas-fired utility wastes, as well as industrial FFC wastes. The study presents EPA's understanding of the generation, management, disposal, and reuse of wastes from coal combustion for electricity generation.

2. Study Factors

The RTC addressed the following eight study factors required under Section 8002(n) of RCRA:

1. Sources and volumes of such materials generated per year,
2. Present disposal and utilization practices,
3. Potential danger, if any, to human health and the environment from the disposal and reuse of such materials,
4. Documented cases in which danger to human health or the environment from surface runoff or leachate has been proved,
5. Alternatives to current disposal methods,
6. Costs of such alternatives,
7. Impact of those alternatives on the use of coal and other natural resources, and
8. Current and potential utilization of such materials.

In preparing the RTC, EPA addressed these eight study factors as they apply to coal-fired combustion wastes generated by electric utilities. The RTC is divided into six sections that address these factors. The first section provides an overview of the U.S. electric utility industry, including the structure, economic and environmental regulations, and describes the importance of coal to the electric utility industry. The second section examines the amounts and types of wastes generated. The third section discusses current waste management and disposal practices used by the electric utility industry and possible alternatives to these practices. The fourth section reviews the potential and documented impacts of these wastes on human health and the environment, and the fifth section evaluates costs associated with current waste disposal practices and additional costs that could be incurred under a variety of alternative waste management practices. The final section summarizes the RTC's tentative findings and provides recommendations for a regulatory determination.

3. Preliminary Findings

Using the RTC findings, EPA developed three preliminary recommendations for such wastes. A summary of these recommendations is provided below.

a. Large-volume wastes. The RTC found that while the majority of the materials present in the four large volume wastes—fly ash, bottom ash, boiler slag, and flue dust—are not of major concern (e.g., more than 95 percent of the ash is composed of oxides of silicon, aluminum, iron, and calcium), trace constituents in the wastes, including arsenic, barium, cadmium, chromium, lead, mercury, and selenium, may present risks to human health and the environment. However, the data also indicates that these wastes generally do not exhibit the RCRA hazardous waste characteristics. In particular, a review of the extraction procedure (EP) test data indicated that metals are generally not found in leachate at levels above the hazardous waste toxicity characteristic. Only three

[3] *Frank Gearhart, et al.* v. *William K. Reilly, et al.*, No. 91-2435 (D.D.C.)

metals—cadmium, chromium, and arsenic—were detected in any ash or sludge samples above toxicity characteristic levels and then only infrequently.

In addition, the report tentatively concluded that current waste management practices appear to be adequate for protecting human health and the environment. For example, while groundwater monitoring data showed that waste management units can cause releases of pollutants to underlying groundwater, the frequency and magnitude of exceedences of Primary Drinking Water Standards (PDWSs) were found to be relatively low—about 5 percent of all samples showed exceedences of PDWS, with exceedences less than 20 times the applicable standard in all cases. Additionally, human populations generally are not directly exposed to groundwater in the vicinity of coal-fired utility waste management sites; public drinking water intakes are usually at least several kilometers from the sites.

Furthermore, the RTC indicated that as of 1988, coal-fired electric utilities spent about $800 million per year for the disposal of coal combustion wastes. If all utility large-volume wastes from coal combustion were regulated as hazardous wastes, the cost of disposal practices, excluding corrective action costs or higher recycling costs, could increase to $3.7 billion per year. Costs would approach $5 billion annually if all existing facilities were capped and closed and new facilities were constructed with liners, leachate collection systems, flood protection, and groundwater monitoring. Based on these findings, the RTC tentatively concluded that regulation of these wastes under Subtitle C was not warranted.

b. *Low-Volume Wastes.* The RTC identified a number of wastes other than the large-volume wastes that are typically generated in lower volumes by coal-fired electric utilities. These "low-volume wastes" include, but are not limited to, boiler blowdown, coal pile runoff, cooling tower blowdown, demineralizer regenerant and rinses, metal and boiler cleaning wastes, pyrites, and sump effluents. The report indicated that several low-volume wastes may exhibit the hazardous waste characteristics of corrosivity and EP toxicity.

Data in the RTC showed that waste streams produced during equipment maintenance (e.g., boiler chemical cleaning wastes) occasionally exceeded hazardous waste toxicity characteristics for chromium and lead. Boiler chemical cleaning wastes were also, in limited instances, found to exhibit the characteristic of corrosivity. No exceedences of toxicity characteristics were observed for other low-volume wastes, but available data were limited. In addition, the Agency concluded that data on these low-volume wastes that are co-disposed with the four large-volume waste streams were insufficient to determine the potential contribution of particular wastes to environmental risk and that additional study of low-volume wastes was warranted. Because of these findings, the Agency indicated that it was considering removing the exemption for low-volume wastes.

c. *Waste utilization.* EPA noted in the RTC that waste utilization practices appeared to be conducted in an environmentally safe manner. The Agency encouraged the utilization of coal combustion wastes as one method for reducing the amount of these wastes requiring disposal and supported voluntary efforts by industry to investigate new possibilities for utilizing coal combustion wastes.

4. Public Comment Process

With the publication of the RTC, EPA established a comment period that ended May 16, 1988 (See 53 FR 9976, March 28, 1988). In addition, the Agency held a public hearing on the RTC in Denver, Colorado, on April 26, 1988 (53 FR 14839). A second hearing was scheduled but subsequently cancelled. EPA received 24 sets of written comments prior to the close of the comment period. All individual comments and a transcript from the public hearing are available for public inspection in the RTC docket (Docket No. F–88–PATA–FFFFF). The docket also contains a summary of all the comments presented at the hearing or submitted in writing. EPA's responses to those comments are provided in the docket, as well as in Appendix A to this regulatory determination.

D. Supplemental Analysis and Notice of Data Availability

Supplemental data were collected and analyzed for the large-volume and some low-volume wastes addressed by the RTC. A Notice of Data Availability (Notice), which announced the availability of this information, was published in the **Federal Register** on February 12, 1993. In the Notice, EPA also made available for comment the proposed methodology to be used in making a final regulatory determination for fly ash, bottom ash, slag, and flue gas emission control wastes. The Agency provided a 45-day public comment period, which closed on March 29, 1993.

The supplemental data provided in the Notice were obtained by EPA from various EPA offices and other Federal agencies, State agencies, and the electric utility industry. In addition, literature searches were performed to identify recently published materials on fly ash, bottom ash, boiler slag, and flue gas emission control waste generated by coal-fired electric utilities. Information in the Notice included:

- Published and unpublished materials obtained from State and Federal agencies, utilities and trade industry groups, and other knowledgeable parties on the volumes and characteristics of fly and bottom ash, slag, and flue gas emission control waste.
- Published and unpublished materials on management practices (including co-disposal and reutilization) associated with fly and bottom ash, slag, and flue gas emission control waste.
- Published and unpublished materials on the potential environmental impacts associated with fly and bottom ash, slag, and flue gas emission control waste management.
- Published and unpublished materials on trends in utility plant operations that may affect waste volumes and characteristics. Specific information was sought on innovations in scrubber use and the potential impacts of the 1990 Clean Air Act Amendments on waste volumes and characteristics.
- Energy Information Agency (EIA), Department of Energy, 1990 data on utility operations and waste generation obtained from EIA's Form 767 database. These data are submitted to EIA annually by electric utilities.
- Site visit reports and accompanying facility submittals for five power plants visited by EPA during fall of 1992.
- Materials obtained from public files maintained by State regulatory agencies in Virginia, North Dakota, Texas, Indiana, Colorado, Wisconsin, Ohio, and Pennsylvania. These materials focus on waste characterization and environmental monitoring data, along with supporting background information.

EPA received 14 written comments addressing the Notice. All of the comments are available for public inspection in Docket No. F–93–FFCA–FFFFF. EPA's response to the comments are provided in the docket and in Appendix B to this regulatory determination.

II. Scope of the Regulatory Determination

This section describes the wastes that are and are not affected by this

regulatory determination. The discussion addresses the affected generators, the status of wastes generated from those utilities that co-burn fossil fuels with non-coal fossil fuels or other materials, and the effect of co-management of the four large-volume wastes with low-volume coal combustion wastes on the regulatory status of the large-volume wastes.

The Consent Decree divided the universe of fossil-fuel combustion wastes into two categories: large-volume wastes from coal-fired electric utilities referenced in RCRA Section 3001(b)(3) (fly ash, bottom ash, boiler slag, and flue gas emission control wastes) and "remaining wastes" (these wastes must still be studied according to RCRA Section 8002(n)). Each category has separate schedules for making the regulatory determination. Today's action only affects fly ash, bottom ash, boiler slag, and flue gas emission control waste from coal-fired electric utilities. All remaining wastes are outside the scope of this determination. Because a waste stream which is categorized as a large-volume waste as generated may become a remaining waste as a result of the manner in which it is managed, this section explains the universe of as-generated and as-managed large-volume wastes affected by today's action.

A. As-Generated Large-Volume Wastes

The universe of wastes affected by this action is limited to the large-volume wastes generated by coal-fired units at steam electric utility power plants in the United States, including independent power producers not engaged in any other industrial activity (this latter group was included because the Agency has no reason to believe that its wastes and practices are any different than those of larger power plants). These wastes are subject to the regulatory determination only when managed separately from other FFC wastes. Further, the population is limited to wastes from those facilities for which coal is almost the sole fossil-fuel feed.

Information on electric utilities collected since publication of the Report to Congress demonstrates that nearly all coal-fired boilers occasionally burn small amounts of natural gas and/or fossil-fuel oil for boiler startup or flame stabilization. While oil ash is a remaining waste outside the scope of today's action, the Agency believes, based on published literature and information collected during site visits, that the burning of oil for startup and flame stabilization results in a de minimis contribution to the total volume of combustion by-products generated by the boiler during normal operations. Similarly, natural gas combustion for boiler startup or flame stabilization results in de minimis ash formation relative to the volume of by-products generated from coal combustion. Accordingly, the total volume of fly ash, bottom ash, slag, and flue gas emission control waste generated by a coal-fired plant that burns oil or natural gas in small quantities for start-up or flame stabilization shall be considered a large-volume waste subject to this determination.

The information collected following publication of the RTC also indicates that some operators occasionally burn materials other than coal in utility boilers, some of which are considered hazardous wastes under RCRA (operators may do so and their residues continue to remain exempt under the Bevill exemption as long as 50 percent of the feed is coal and the residue passes the BIF two-part test if they burn hazardous waste). This practice may be conducted for the purposes of disposal or energy recovery. Wastes from the co-burning of materials were not studied in the RTC, and very limited information regarding their generation, characteristics, and management has been collected to date. The Agency recognizes that the burning of such materials, when practiced in an environmentally sound manner, can be an effective waste management or energy recovery strategy. However, EPA has insufficient data to determine the amount of material burned or the potential influence of burning such materials on the characteristics of the four large-volume wastes. The Agency intends to study the co-burning issue further at a later date, as appropriate. Thus, the large-volume wastes which result from any such burning (with the exception of co-burning with hazardous waste) are outside the scope of this determination. The following paragraph discusses the special case of co-burning hazardous waste and coal.

The residues from those facilities that burn hazardous wastes are subject to the Boiler and Industrial Furnace (BIF) rule under RCRA (40 CFR 266.112).[4] Under the BIF rule, facilities must conduct site-specific sampling and analysis of waste-derived residues to document that hazardous waste burning has not significantly increased concentrations of hazardous constituents in the residues. Because this testing ensures that such wastes are similar to those studied in the RTC, thus making further study of these wastes unnecessary, residues that pass the test are within the scope of today's regulatory determination.

Finally, for the purposes of this action, large-volume wastes from coal-fired electric utilities do not include wastes generated from fluidized bed combustion (FBC) boiler units. FBC is a relatively new combustion technology that allows for the removal of sulfur without an end-of-pipe scrubber. The wastes generated by this technology were not studied in the RTC, and only limited information regarding their characteristics and management has been collected to date. The information that is available has not provided EPA with enough evidence to conclude that waste generated from FBC units is substantially similar to conventional boiler wastes. Some sources maintain that FBC units that burn solely coal as a fossil-fuel source generate fly ash and spent bed material that is substantially different from conventional boiler wastes.[5] This is because in FBC, coal is burned in the presence of limestone. The differences in the FBC wastes are defined by a presence of sulfur compounds and high amounts of residual alkalinity. On the other hand, industry representatives believe that the wastes are very similar to the fly ash waste and flue gas emission control wastes studied in the RTC.

The information does indicate that the use of FBC technology in the electric utility industry may be increasing. Because of the current lack of data, the potential of the co-firing of limestone to have a significant effect on the characteristics of the wastes produced, and the potential for increased utilization of the technology, the Agency has decided to defer a decision on these wastes until further information from the growing number of facilities can be examined. Therefore, the Agency considers these wastes "remaining wastes," which are outside the scope of today's regulatory determination.

B As-Managed Large-Volume Wastes

As described above, large-volume wastes include fly ash, bottom ash, slag, and flue gas emission control wastes

[4] The 1981 interpretation at footnote 1 above states that the residues from co-burning enjoy the temporary exemption only when the non-coal material in the feed is burned for its fuel value. This condition, however, was removed for co-burners of hazardous waste in the BIF rule (see preamble discussions at 56 FR 7196–7200, Feb. 21, 1991). For the same reasons cited during that rulemaking, and as a matter of consistency, the Agency no longer imposes such a condition when the non-coal material is not a hazardous waste.

[5] United States Environmental Protection Agency, Office of Research and Development, Fluidized-Bed Combustion Technology Overview, EPA–600/7–81–074, April 1981.

from coal-fired electric utility boilers. However, the Consent Decree defines large-volume wastes that are "mixed with, co-disposed, co-treated, or otherwise co-managed with other wastes generated in conjunction with the combustion of coal or other fossil-fuels * * *" as remaining wastes. As a result, a waste that may be categorized as large-volume as generated may become a remaining waste by virtue of the circumstances of its management. Remaining wastes are outside the scope of this regulatory determination. (Although these wastes are not covered by today's regulatory determination, these wastes remain exempt from RCRA Subtitle C until April 1, 1998, at the latest.)

The RTC found that the level of "co-mixing, co-treatment, co-disposal or co-management" practiced at utility waste disposal sites varies considerably. At one extreme, many or most liquid wastes generated at the plant may be handled along with ash in a single impoundment system. At the other extreme, all large-volume wastes may be discharged to units receiving no other materials of any kind. In practice, most utility disposal sites operate somewhere between these extremes, with large-volume wastes discharged into units receiving certain other materials. Depending on the specific materials commingled in a particular management unit, the resulting mixture may be a remaining waste and hence fall outside of the scope of today's action.

The Agency recognizes that many plant operators use process waters (e.g., non-contact cooling water and low-pressure service water) in ash handling or FGD systems. Because of the continuous use of these process waters, the Agency does not consider them to be wastes. In any event, the use of these process waters as feedwater for emission control systems or for ash transport generally will not increase the environmental risks associated with the wastes relative to the risks derived from utilization of fresh water for the same purposes. Discouraging such practices may lead to an increased usage of fresh water for the same purposes, thereby increasing the total volume of water exposed to the large-volume wastes as well as the total volume of waste generated. The Agency feels that this would be an undesirable outcome of today's action. For these reasons, the Agency does not consider the practice of using these non-contact process waters in ash sluicing systems or as makeup water for FGD systems to constitute co-management. The four large-volume wastes, therefore, that are transported/mixed with these process waters do not become "remaining wastes." Instead, they are within the scope of this Regulatory Determination. These waters are limited to ash hopper seal water, ash hopper cooling water, and other non-contact cooling waters.

The Agency emphasizes that co-management of low-volume wastes and large-volume wastes makes the combined waste stream a remaining waste. Given below is a list of management practices that result in combined waste streams that are remaining wastes. This list, which is not exhaustive, includes those activities observed or believed to occur at operating FFC waste disposal facilities that involve the "mixing, co-treatment, co-disposal, or co-management" of large-volume wastes with low-volume wastes. Remaining wastes as managed include:

- Discharge of boiler blowdown to a large-volume waste impoundment,
- Discharge of demineralizer regenerant to a large-volume waste impoundment,
- Discharge of metal cleaning wastes to a large-volume waste impoundment,
- Discharge of boiler chemical cleaning wastes to a large-volume waste impoundment,
- Discharge of plant wastewater treatment effluent to a large-volume waste impoundment,
- Discharge of coal mill rejects to a large-volume waste impoundment,
- Disposal of oil ash in a large-volume waste landfill or impoundment,
- Disposal of plant wastewater treatment sludge in a large-volume waste landfill,
- Disposal of coal mill rejects in a large-volume waste landfill, and
- Reuse of metal cleaning wastewaters in a FGD feedwater system.

EPA recognizes that it may not have provided a clear understanding of what constitutes co-management since offering the 1981 interpretation of the exemption cited above. Therefore, the Agency may propose a definition of co-management in the future. This is important because low-volume wastes are within the Bevill Exemption only if they are co-managed with large volume waste. Low-volume wastes that are independently managed are not and have never been within the scope of the Bevill Exemption.[6]

III. Factors Considered in Making the Regulatory Determination

RCRA, as amended, directs EPA to make a regulatory determination generally based upon the RTC and comments received from interested parties. The statute contains the eight study parameters identified in Section I.C.2., Study Factors. In addition, RCRA Section 8002(n) suggests that EPA review relevant studies and other actions of other Federal and State agencies and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort.

EPA complied with the congressional mandate in developing, in 1988, the required RTC. In conducting this study, EPA relied upon the analysis of the eight study factors noted above. The Agency has expanded the data base through the collection of additional data referenced in the February 12, 1993, Notice. The Notice also made available, in the RCRA docket, the three-step methodology the Agency was considering using in making this regulatory determination. This basic analytical approach was used in making the regulatory determination for mineral processing wastes (56 FR 27300, June 13, 1991). EPA modified the methodology in this case, however, so that it best fit the available information on the nature and management of the coal-fired electric utility wastes at issue in this determination. The method involves answering a series of questions covering the potential hazards of the wastes, the existing management and regulatory controls that affect the hazards that may be presented, and the potential impacts of regulating the wastes as hazardous under RCRA Subtitle C. This approach allows EPA to make a systematic evaluation of the information presented in the RTC and other information collected pursuant to the Notice. EPA has solicited and incorporated comments on the RTC, the data described in the Notice, and the three-step methodology in making today's regulatory determination. EPA believes that this approach is consistent with congressional intent.

EPA received no comments that disagreed with any aspect of the three-step methodology. Therefore, no changes have been made in the approach. The decision process outlined below presents a series of questions and sub-questions that were addressed in the order posed. If the Agency determined the response to Step 1 for a waste to be affirmative (e.g., "Yes, management of this waste does pose human health/environmental problems, or might cause problems in the future"), then the analysis proceeded to Step 2 for the waste and constituent(s) of concern. If, however, the answer to Step 1 was negative, then the analysis

[6] Industry comments on both the RTC and Notice generally agreed with this interpretation.

stopped and the Agency determined that regulation of that waste under Subtitle C was not warranted. If the analysis proceeded to Step 2 and the response to Step 2 was affirmative (e.g., "Yes, more stringent regulation is necessary and desirable"), analysis then proceeded to Step 3. If the response to Step 2 was negative, however, the analysis stopped and the Agency determined that regulation of that waste under Subtitle C was not warranted. Finally, if the Agency proceeded to Step 3 and found that the consequences of regulating the waste under Subtitle C were substantial and not justified by the risk reduction that could be obtained by Subtitle C regulation, then the Agency would determine that Subtitle C regulation was not warranted. The opposite conclusion to the question posed by Step 3 would result in a determination that regulation of the waste as hazardous under Subtitle C is warranted.

The rationale for the order of questions is that a FFC waste should first be considered to present risk to human health or the environment or a potential risk under plausible mismanagement scenarios before the Agency considers it for regulation under Subtitle C. Second, the Agency should determine that current management practices and existing State and Federal regulatory controls are inadequate to limit the risks posed by a waste, and that Subtitle C regulation would be effective and appropriate, before it considers regulating the waste under Subtitle C. Finally, the special status of the waste requires that the Agency consider the impacts to the industry that regulation under Subtitle C would create in making a decision to regulate the waste as hazardous. The methodology, therefore, allows EPA to systematically narrow its focus to those wastes that do or may present significant risk of harm and for which additional regulatory controls are necessary and desirable.

The discussion below addresses each of the steps and sub-steps in more detail.

Step 1. Does the management of this waste pose human health/environmental problems? Might current practices cause problems in the future?

Critical to the Agency's decision-making process is whether the special waste either has caused or may cause human health or environmental damage. To resolve those issues, EPA has posed the following key questions:

Substep 1. Has the waste, as currently managed, caused documented human health impacts or environmental damage?

Substep 2. Does EPA's analysis indicate that the waste could pose significant risk to human health or the environment at any sites that generate it (or in offsite use), under either current management practices or plausible mismanagement scenarios?

Substep 3. Does the waste exhibit any of the characteristics of hazardous waste?

As described above, the Agency first determined whether each waste may pose human health/environmental problems by examining whether the waste has caused documented human health or environmental damages in the past, whether each waste, as managed, may pose significant risk to human health or the environment, and whether each waste exhibits any of the characteristics of hazardous waste. If each of the questions in Step 1 resulted in a negative response, no further review would be performed for that waste, and the Agency would determine that regulation under Subtitle C of RCRA is not warranted. However, as with the Regulatory Determination for Mineral Processing Special Wastes (56 FR 27305, June 13, 1991), an affirmative response to any one of the three sub-questions above did not necessarily trigger further analysis under Step 2 of the methodology. Rather, the Agency answered each of the three questions separately and then considered the combined responses as a whole in deciding whether further evaluation was necessary. In that consideration, the certainty and weight of evidence supporting an affirmative response to one question was taken into account in the Agency's decision to proceed to Step 2. If the Agency determined that additional review was warranted for a particular waste, additional review under Step 2 was limited to those waste characteristics or waste management practices for which significant potential for risk was identified in Step 1.

The first question the Agency addressed under Step 1 was whether coal combustion waste has caused documented human health impacts or environmental damage. To determine this, the Agency first considered existing damage case information presented in the RTC. EPA examined additional damage case information to determine whether there was further evidence of negative impacts to human health or the environment. The Agency requires that each relevant case satisfy at least one of the following three conditions: scientific investigation concluding that damages occurred, administrative ruling concluding that damages occurred, or court decision or out-of-court settlement concluding that damages occurred. Ideally, damages would clearly be the result of the large-volume coal combustion wastes.

In the Agency's analysis, damage to human health or the environment was considered as follows: Threat to human health included both acute and chronic effects (e.g., exceedences of primary drinking water standards, directly observed health effects, such as elevated blood contaminant levels or loss of life) associated with management of coal-fired electric utility wastes, while danger to the environment included: (1) Impairment of natural resources (e.g., contamination of any source of drinking water reasonably expected to be used), (2) ecological effects resulting in impairment of the structure or function of natural ecosystems and habitats, and (3) effects on wildlife resulting in impairment of terrestrial or aquatic fauna (e.g., reduction in species diversity or density, impairment of reproduction).

To address the second question—"could the waste pose significant risk to human health and the environment under either current management practices or plausible mismanagement scenarios, the Agency performed a two-part assessment of the potential for risk presented by the waste.

First, the Agency conducted a risk screen of intrinsic hazard of the wastes, comparing waste characterization data with conservative screening criteria developed for four exposure pathways: groundwater, surface water, inhalation, and ingestion. The purpose of the risk screen was to identify the waste constituents and exposure pathways that have the potential to present threats to human health and the environment. Exceedences of the screening criteria indicate the need for further study, but do not in themselves demonstrate that the wastes pose a significant hazard.

Second, for each waste constituent found to exceed the screening criteria, the Agency evaluated the potential for release, transport, and exposure of that constituent for specific pathways. The three exposure pathways evaluated for human health risk were groundwater ingestion, particulate inhalation, and soil ingestion. The fourth pathway, surface water, was evaluated for ecological risk. The Agency solicited comment in the Notice on excluding from consideration another pathway, radiation exposure, because of insufficient information to perform the required analysis. No comments or supplemental data were received regarding the proposed exclusion. Therefore, EPA did not consider radiation exposure in the analysis.

To address the third question of Step 1, the Agency reviewed available waste characterization data to determine whether fly and bottom ash, slag, and FGD sludge exhibit any of the hazardous characteristics. In evaluating toxicity data, the Agency considered both Extraction Procedure (EP) and Toxicity Characteristic Leaching Procedure (TCLP) data, since much of the currently available data on toxicity predates the use of the TCLP.

Several commenters on the RTC claimed that the EP toxicity test is not a valid indication of hazards associated with utility wastes since the test was designed to mimic conditions in acidic municipal landfills rather than homogeneous monofills used by electric utilities. Those commenters concluded that data from the EP test significantly overstate potential risks.

As discussed further in Appendix A to this preamble, EPA has developed the methodology to take into account the eight study factors (Section 8002(n)) set forth in the Bevill Exemption to determine whether hazardous waste regulation is warranted for FFC wastes. While waste characterization data, including both the results of EP toxicity testing and those of other leaching procedures (TCLP, ASTM, etc.), are considered in the decision, they are not the sole basis for determining whether to regulate fossil-fuel combustion wastes under RCRA Subtitle C. The methodology focuses on the risks posed by fossil-fuel combustion wastes as managed (and some ash is currently managed in Subtitle D landfills). EPA therefore believes that consideration of EP toxicity data, in conjunction with the results of other leaching studies and data on the actual environmental impacts of waste management practices, is appropriate.

EPA received limited additional data from commenters to the Notice. The few EP and TCLP results provided were consistent with other samples collected for the purposes of the RTC and the Notice. None of the additional data supplied during the comment period exceeded the hazardous waste criteria.

Step 2. Is more stringent regulation necessary or desirable?

If the Agency determined in Step 1 that the management of fly or bottom ash, slag, or FGD sludge from coal-fired utilities has caused or may potentially cause human health or environmental impacts, then the Agency would proceed to Step 2. In evaluating the need for more stringent controls to address the potential risks associated with the management of these wastes, EPA asked the following questions:

1. Are current practices adequate to limit contaminant release and associated risk?
2. Are current Federal and State regulatory controls adequate to address the management of the wastes?
3. Will Subtitle C effectively address problems associated with the waste without imposing significant unnecessary controls that are inconsistent with the special status of the waste?

In Step 2, the Agency looked at waste management practices and existing regulations to examine the potential for release and exposure under current practices. If current management practices or existing regulatory controls were found to be adequate or if Subtitle C was found to be an ineffective or inappropriate regulatory alternative, then the Agency would determine that the waste should not be regulated under Subtitle C. If, on the other hand, current practices or existing regulatory controls were found to be inadequate in controlling potential and actual risks and if Subtitle C would be effective, the Agency would proceed to Step 3.

Step 3. What would be the operational and economic consequences of a decision to regulate a special waste under Subtitle C?

If, based upon the previous two steps, the Agency found that a waste presents significant risk despite current management practices and existing regulatory controls and that Subtitle C regulation would be effective and appropriate in reducing those risks without imposing unnecessary controls, the Agency would then evaluate the costs and impacts associated with regulating this waste under Subtitle C and, possibly, other regulatory scenarios. Costs and impacts would be evaluated in terms of the estimated affected population of generators, the ability of generators to pass on costs of compliance to customers or suppliers, the effect of regulation on domestic energy supply and capacity, and the effect of regulation on beneficial use of the affected waste.

With cases in which the Subtitle C scenarios would impose widespread and significant impacts on facilities, reduce domestic capacity or supply, and/or deter safe and beneficial use of the waste, EPA might conclude that regulation under Subtitle C is inappropriate. However, EPA might determine that regulation of the waste under Subtitle C is warranted if, in the Agency's judgement, the reduction in risk that would result from such regulation would justify the operational and economic consequences to the industry and the economy as a whole. The Agency invited commenters to the Notice to submit information regarding cost data.

IV. Regulatory Determination for Four Large-Volume Coal-Fired Utility Wastes

The following discussion presents EPA's conclusions regarding the regulatory status of large-volume coal-fired utility wastes under RCRA. The determination as to whether regulation of such wastes under Subtitle C is warranted is based upon the February 1988 Report to Congress, comments on the Report to Congress including comments received at the public hearing held in Denver on April 26, 1988, the information collected for the February 12, 1988, Notice, and comments received on the Notice.

Based on all of the available information, EPA has concluded that regulation of the four large-volume fossil-fuel combustion wastes as hazardous waste under RCRA Subtitle C is unwarranted. Below are the Agency's responses to each step of the decision methodology.

Step 1. Does the management of this waste pose human health/environmental problems? Might current practices cause problems in the future? The Agency has determined that the answer to this question is yes.

Substep 1. Has the waste, as currently managed, caused documented human health impacts or environmental damage?

Response: The Agency has determined that the waste has caused documented impacts, but at a very limited number of sites.

In accordance with the methodology described above, EPA first addressed whether the management of this waste currently poses human health/environmental problems and whether current practices could cause problems in the future. In its examination of potential/actual cases in which danger to human health or the environment could be attributed to the management of fossil-fuel combustion wastes, the RTC included information from several studies that documented occasional exceedences of primary and secondary drinking water standards in groundwater underlying fossil-fuel waste management sites. To supplement the RTC data, EPA conducted State file reviews in States selected for their geographical representation and large coal-fired electricity generation capacity. Overall, both efforts indicate that the extent of actual damage cases/environmental harm associated with large volume FFC waste management appears limited.

EPA used the "test of proof" developed to support the Report to Congress on Mineral Processing Wastes to evaluate the potential damage cases. As described in Chapter 2 of that report, the test of proof requires that a case satisfy at least one of three conditions: scientific investigation concluding that damages occurred, administrative ruling concluding that damages occurred, or court decision or out-of-court settlement concluding that damages occurred. For the six damage cases described below, scientific investigation was the measure of proof satisfied, since the data most supported application of this measure.

In applying the test, EPA first considered whether actual documentation exists that shows that human health or environmental harm occurred (e.g., contaminated groundwater in a water supply well, observed impacts on wildlife). Only a limited number of large-volume FFC waste management sites actually meet this criterion and can be considered proven damage cases. These cases include the two sites identified in the RTC, as well as four additional sites identified during recent data collection efforts. EPA notes that of these six cases, only one case can clearly be attributed to fly ash management alone. The remaining five cases are associated with the co-management of the large-volume wastes with other wastes. Because co-management of large and low-volume wastes is the predominant waste management practice, limited information exists on independently managed large-volume wastes.

The RTC described a site that involved a dike failure that caused an accidental release from a fly ash disposal lagoon to a river. This case resulted in substantial damage to river organisms. The other case described in the RTC involved co-management. In this case, a release occurred from a fly ash and petroleum coke waste disposal site that resulted in the contamination of drinking water wells with selenium and vanadium. This site is ranked on the CERCLA (Superfund) National Priority List Site.

EPA's more recent data collection efforts resulted in the identification of four additional sites that are considered proven cases of damage (see the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste, found in Docket no. F-93-FFCA-FFFFF). Each case involves co-management of wastes at older, unlined waste management units. These incidents involved groundwater contamination and/or vegetative damages due to releases from waste management units.

In summary, there is minimal documentation of impacts on drinking water sources in the vicinity of coal-fired utilities. In addition, it is important to note that the damage case sites were chosen for study because of known releases and cannot necessarily be extrapolated to the general universe. Also, most releases have been from unlined units at older sites that in many States are now subject to more stringent design and operating criteria.[7] Furthermore, actual cases of harm to human health or the environment may be limited to a few sites, often with other contributing factors, including additional pollutant sources attributed to the co-management with other FFC and non-FFC wastes. The review of such cases of co-management will be reserved for the "remaining waste" study.

The FFC waste damage case/environmental data collected to date indicate, therefore, that although the extent appears limited, damage to the environment has occurred. Although the releases are often confined to the vicinity of the units and have not reached environmental/human receptors, the potential for exposure necessitates further analysis in Substep 2, which examines the potential risks posed by these wastes.

Substep 2. Does EPA's analysis indicate that the waste could pose significant risk to human health or the environment at any sites that generate coal combustion wastes, under either current management practices or plausible mismanagement scenarios?

Responses: Groundwater contamination and surface water contamination through groundwater recharge are possible under some plausible conditions (unlined units). Available information on the environmental conditions of the sites indicates ecological and natural resource damages are of most concern, because potential for human exposure is limited.

The RTC contains considerable information on the four large-volume coal combustion wastes (fly ash, bottom ash, slag, and flue gas desulfurization (FGD) sludge). Information includes waste characteristics and management practices, environmental factors affecting human exposure potential at disposal sites, and evidence of ecological damage at coal combustion sites. In addition, EPA collected supplemental information from various EPA offices and other Federal agencies, State agencies, and the electric utility industry on waste characterization, management, and potential impacts. This supplemental information included groundwater monitoring data for 43 coal combustion waste sites collected from State regulatory agencies and from EPA site visit reports. All data used in this supplemental analysis are available for public inspection in the docket No. F-93-FFCA-FFFFF. A bibliography of the sources used in the risk analysis is found in Appendix A of the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste, also found in Docket no. F-93-FFCA-FFFFF.

The first step of the methodology was to evaluate constituents of concern (identified by waste characterization data) using a risk screen. A risk screen analysis is a process which applies a conservative and simplified methodology to the constituents and pathways to determine if they are of concern. The risk screen compared waste characterization data with screening-level criteria. The screening criteria were developed to identify wastes, constituents, and pathways requiring further analysis; that is, wastes captured by the screen may or may not be of concern. Criteria for 23 constituents (primarily metals) were developed for groundwater, surface water, ingestion, and inhalation exposure pathways using a methodology similar to that used in the mineral processing regulatory determination. (In the cases where the Agency regulatory levels had changed since the mineral processing RTC, the screening criteria were also updated.)

Groundwater exposure criteria were developed using the MCLs set by the Agency to protect drinking water. If no primary MCL had been established for a particular parameter, then a health-based level (HBL) was calculated using Agency cancer slope factors or non-cancer reference doses (RfDs) from IRIS.[8] In instances where the calculated HBL was less than corresponding MCL, both values were considered in the screening.

Screening criteria based on primary MCLs were derived by multiplying the MCL by a factor of 10 to simulate scenarios where only limited dilution of waste leachate occurs prior to exposure. HBLs were derived from IRIS[9] drinking

[7] The percentage of units required to meet more stringent design and operating criteria will increase as older units reach capacity (assuming a typical lifetime fo 15 years) and new units come on-line (and are subject to these more stringent requirements).

[8] U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS). (IRIS, November 1992 update).

[9] Ibid.

water or oral cancer slope factors (CSFs) representing a 1×10^{-5} lifetime cancer risk, or RfDs. Calculation of the HBLs relied on the following conservative assumptions: the maximally exposed 70 kg individual drinking 2 liters of water per day, 365 days per year, for a lifetime duration of 70 years. (The 70-year exposure duration was chosen to maintain comparability with the MCLs; this approach is consistent with that taken in the mineral processing regulatory determination.) These assumptions yield the following general equations:

HBL_{CSF} (mg/l) = $(1\times10^{-5})(70\ y)(70\ kg)/\{(CSF\ (mg/kg/d)^{-1})(2\ l/d)(70\ y)\}$

HB_{RfD} (mg/l) = (RfD mg/kg/day)(70 kg)/(2 l/day)

As with the MCL-based criteria, the HBLs were multiplied by a factor of 10 to simulate a scenario where only limited dilution of waste leachate occurs prior to exposure. Groundwater exposure criteria were compared with waste EP Toxicity and TCLP analysis results for each of the four waste steams.

The surface water exposure criteria were selected to represent potential harm to aquatic organisms exposed to surface water releases of wastes or waste leachate. The criteria were derived by multiplying the freshwater chronic Ambient Water Quality Criteria (AWQC) for non-human effects by a factor of 100 to simulate a scenario where only limited dilution occurs. Surface water exposure criteria were compared with waste EP Toxicity and TCLP analysis results for the four waste streams.

The ingestion screening criteria were derived from IRIS oral RfDs and oral CSFs, assuming incidental ingestion of solid waste materials. Exposure assumptions are an ingestion rate of 200 mg/day from ages 1 to 6, and 100 mg/day from ages 7 to 31 (resulting in an average of 0.114 g soil/day), an adult receptor weight of 70 kg and an exposure of 350 days/year for 30 years. For CSF-derived values, a life-time averaging 70 years was assumed. These assumptions were then used to calculate the concentration of a constituent in a waste that would result in an exposure equivalent to the RfD or the concentration corresponding to a lifetime cancer risk of 1×10^{-5}. The equations for RfD- and CSF-based criteria are shown below.

$Criterion_{RfD}$ (mg/g) = RfD (mg/kg/d) {(70 kg)(365 d/y)(30 y)}/ {(350 d/y)(30 y)(0.114 g soil/d)}

$Criterion_{CSF}$ (mg/g) = $\{10^{-5}/CSF\ (mg/kg/d)^{-1}\}$(70 kg)(365 d/y)(70 y)}/ {(350 d/y)(30 y)(0.114 g soil/d)}

No dilution factor was employed in deriving the criteria for solid samples. The exposure pathway assumes exposure to particulate whole waste material. Ingestion exposure criteria were compared with waste total constituent analysis results for the four waste steams.

The exposure assumptions used in deriving inhalation exposure criteria include: 50 µg/m3 airborne dust concentration;[10] adult inhalation volume of 20 m^3/d; 70 kg body weight; exposure frequency of 350 days per year; exposure duration of 30 years; and, for CSF-derived values, 70 year lifespan (or averaging time) and 1×10^{-5} risk of cancer. Note that 50 µg/m^3x20 m^3/d results in a soil exposure rate of 1 mg/d. The equations used to derive the criteria from both inhalation RfDs and inhalation CSFs are shown below:

$Criteria_{RfD}$ (mg/g) = RfD (mg/kg/d) {(70 kg)(365 d/y)(30 y)}/ {(350 d/y)(30 y)(0.001 g soil/d)}

$Criteria_{CSF}$ (mg/g) = $\{1\times10^{-5}/CSF\ (mg/kg/d)^{-1}\}$ {(70 kg)(365 d/y)(70 y)}/ {(350 d/y)(30 y)(0.001 g soil/d)}

Again, no dilution factor was employed in deriving the criteria for solid samples. The exposure pathway assumes exposure to particulate whole waste material. Inhalation exposure criteria were compared with waste total constituent analysis results for the four waste steams.

The screening criteria described above were then compared to EP, TCLP, and total constituent data from the RTC and subsequent data collection efforts. For all waste constituents that exceeded a screening-level criterion at more than 10 percent of the sites sampled, or exceeded the criteria by more than a factor of 10, further analysis was conducted. A summary of screening criteria exceedences, reported by waste type and by exposure pathway, can be found in Appendix C of the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste.

The results of the risk screening suggest that of the large-volume wastes, fly ash and FGD sludge are of most concern. The risk screen also identified groundwater, surface water, and inhalation as exposure pathways needing further analysis. The constituents needing further analysis included arsenic, cadmium, chromium, lead, mercury, nickel, Ph, selenium, and silver.

The Agency then evaluated the release, transport, and exposure potential of those constituents, wastes, and pathways for which the risk screen indicated that further analysis was necessary. When available, monitoring data were used to determine the potential for human and environmental exposure. In other cases, information on the physical setting of coal combustion waste sites and on the waste management practices was used to evaluate exposure potential. In the case of the inhalation pathway, the potential for human health risk was evaluated using an atmospheric fate and transport model. For the inhalation pathway, the potential for human health risk, when evaluated using an atmospheric fate and transport model, was found to be negligible. For more information on the air pathway analysis, please consult the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste. Further analyses of the groundwater and surface water pathway are summarized below.

Groundwater monitoring data were used in both the groundwater and surface water exposure pathway analyses. A summary table of the groundwater monitoring sites is in Appendix D of the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste found in the docket. When interpreting the groundwater monitoring data, the Agency took several factors into account.

First, many of the sites may have co-managed their coal combustion wastes with other wastes, such as boiler cleaning solution or pyrites. The extent to which these other wastes may have contributed to groundwater contamination could not be conclusively determined, because it was difficult to assess in many cases whether co-management had occurred and without this information, it was not possible to separate the effects of the large-volume wastes from the other wastes. However, at least two site operators asserted that they believed that co-managed wastes, and not the large-volume wastes, were the cause of groundwater contamination. The Agency took the presence of co-managed wastes into account when evaluating the risk from the large-volume coal combustion wastes.

Second, some of the sites have other possible sources of contamination nearby. To the extent that they can be determined, these sources are noted in the summary table referenced above. Finally, in the case of some contaminants (e.g., iron), naturally occurring levels may be quite high. Again, to the extent that naturally occurring constituents can be

[10] 50 µg/m3 is the National Ambient Air Quality Standard for annual exposure to particulates.

determined to be adding to downgradient concentrations, this is noted in the summary table.

With these considerations in mind, the Agency determined that available data from coal combustion waste landfills and surface impoundments demonstrated the existence of potential for human exposure to groundwater contamination, because coal combustion waste constituents identified in the risk screen as needing further study were found to be leaching onsite in excess of the primary MCLs. Subsequent analyses of coal combustion waste sites suggest, however, that potential for actual human exposure is very limited.

For example, nine sites of the forty-nine sites with groundwater monitoring data had contaminants above the MCL that appeared to stem from coal combustion units. (Another ten sites had upgradient concentrations equal to downgradient concentrations, other possible sources of groundwater contamination, or (in two cases) a lack of upgradient information, preventing any conclusions about the effects of the coal combustion units on groundwater contamination.) Constituents with exceedences include arsenic, barium, cadmium, chromium, fluoride, lead, mercury, nickel, and selenium. Of the nine sites, none were completely lined, although one site had a clay-lined disposal unit with an under-drain emptying into a series of unlined ponds. All nine sites have older (pre-1975) units, four consisting of surface impoundments, four consisting of landfills, and one with both types of units. Fly ash was the principal waste disposed of in all units. Four sites of the nine also are known to have accepted co-managed wastes (pyrites, boiler cleaning wastes, demineralizer regenerant, oil ash, etc.), and the others may have as well.

Potential for human exposure to groundwater contaminants from coal combustion wastes is limited because of the location of most coal combustion sites. Based on a random study (found in the RTC) of one hundred sites, only 29 percent of the sites have any population within 1 kilometer, and only 34 percent of the sites have public drinking water systems within 5 kilometers. Although infiltration and transportation of contaminants in groundwater varies with site- or regional-specific factors (such as depth to groundwater, hydraulic conductivity, soil type, and net recharge), exposure to coal combustion waste groundwater contaminants 5 kilometers from the source of contamination is not expected to occur. Of the public drinking water systems within 5 kilometers of coal combustion waste sites, just under half (47 percent) are expected to treat the groundwater for hardness (i.e., these systems have groundwater with over 240 ppm $CaCO_3$), which would tend to remove co-contaminant metals as well.

Coal combustion units also tend to be near surface water bodies. The same RTC study revealed that 58 percent of the sites are within 500 meters of a surface water body. The volume and flow rate of surface water would tend to dilute and divert the contaminant plume.

In addition, groundwater contamination appears to be attributable to past management practices. As the Agency's groundwater monitoring data outlines above, all of the nine sites with a clear indication of groundwater contamination are older (pre-1975), unlined units. (In contrast, of the 13 lined sites, only one had exceedences of an MCL, and that site had equal concentrations upgradient and downgradient.)

Finally, some of the groundwater contamination may be attributable to co-management with other wastes, such as pyrites, boiler cleaning waste, and demineralizer regenerant. Because of the prevalence of co-management (several public comments on the RTC reported that the predominant industry practice is to co-dispose of low-volume wastes in ash or flue gas emission control waste ponds), the large-volume waste may not be the sole contributor to the groundwater contamination. Two of the nine sites report that co-management is the cause of the contamination.

In conclusion, hazardous constituents in coal combustion waste (particularly in fly ash and flue gas emission control waste) have the potential to leach into groundwater under certain conditions. Contaminants of concern include arsenic, cadmium, chromium, lead, mercury, and selenium. Available data suggest, however, that contamination stems from older, unlined units representing past practices, and that the units are not typically located near populations and drinking water systems. In addition, the sites within 5 kilometers of public drinking water systems, about half have groundwater with over 240 ppm $CaCo_3$ and are therefore expected to treat the water for hardness, thus removing co-contaminant metals as well. Furthermore, at least some of the groundwater contamination is attributable to other wastes managed with the large-volume coal combustion wastes. Thus, potential for human exposure solely from the large-volume coal combustion waste from current management practices is limited.

An examination of the surface water pathway reveals that, although direct discharge of untreated coal combustion waste to surface water is not likely because of Clean Water Act controls, a few of the coal combustion waste constituents have the potential in some instances, to affect nearby vegetation and aquatic organisms by migration through shallow groundwater to nearby surface waters. This was observed at one site where migration of boron to a nearby wetland was determined by the State to be the cause of vegetative damage. In many cases, natural attenuation processes are expected to dilute the contaminants below levels of concern. For example, if contaminants reach surface waters, the volume of surface water and its high flow rate could dilute the contaminants. For those sites whose nearby water bodies may have a low flow rate (e.g., lakes, swamps, or marshes), however, coal combustion waste may cause local environmental damages, as was observed at the above site.

Even when contaminated groundwater does not affect human health and the environment, it may be considered to have caused impacts that limit future use of that groundwater. In particular, available data suggest that the groundwater at a number of coal combustion waste sites is contaminated above secondary MCLs (SMCLs) by such secondary parameters as iron, manganese, sulfate, and total dissolved solids, although these effects may be localized through dilution and attenuation. The SMCLs are guidelines generally set to be protective of such aesthetic considerations as taste, odor, potential to stain laundry, and human cosmetic effects such as tooth and skin staining.

In addition to being disposed of in landfills and surface impoundments, coal combustion ash is often beneficially used both onsite and offsite. EPA continues to encourage the beneficial use of coal combustion wastes. Because most offsite applications tend to immobilize the coal combustion waste (e.g., fly ash used to make concrete), adverse impacts appear to be unlikely. However, if fly ash is applied directly to agricultural soil, there is some concern with metals uptake by food crops and cattle feed. In addition, boron in the coal ash is readily mobilized and has a phytotoxic effect on plants. Although coal ash is not frequently used in agriculture, any

agricultural use of coal combustion waste should be carefully evaluated.[11]

Substep 3: Does the waste exhibit any of the characteristics of hazardous waste?

Response: The Agency has determined that these wastes exhibit the characteristics of hazardous waste infrequently, from 0 to 7 percent of the samples depending on waste type.

The RTC concludes that although coal combustion waste may leach contaminants (arsenic, cadmium, chromium, lead, and mercury) above toxicity characteristic regulatory levels, such exceedences are infrequent and the average concentrations of constituents are below characteristically toxic levels. A full bibliography of the sources of EP and TCLP data and a summary of the results are given in Appendices A and B of the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste.

The results of Step 1 of the analysis indicate that the wastes rarely exhibit any characteristics of hazardous waste and the waste pose very limited risk to human health or the environment under certain scenarios, such as unlined units sited over shallow groundwater with nearby drinking water wells. Furthermore, since most releases have occurred at unlined older sites, EPA recognized that a review of current waste management practices and regulatory control governing these practices was appropriate as outlined in Step 2 of the methodology, which assesses the need for more stringent regulation.

Step 2: Is more stringent regulation necessary or desirable? The Agency has determined that the answer is no. EPA regulation is not necessary or desirable.

In evaluating the need for more stringent controls to address the potential risks associated with the management of these wastes, EPA first evaluated the adequacy of current industry waste management practices in limiting contaminant release and associated risk. The Agency then viewed the adequacy of current State and Federal regulatory controls addressing these wastes. For the purposes of this analysis, EPA supplemented the data supplied in the RTC with site visits, a 1992 EPA study under which the Agency obtained and reviewed State regulations applicable to FFC waste management, the Department of Energy's 1991 report entitled Coal Combustion Waste Disposal: Update of State Regulations and Cost Data, dialogue with industry and State representatives, the Electric Power Research Institute's Facility Design and Installation Manual (1991), State file searches, and literature reviews.

Substep 1. Are current practices adequate to limit contaminant release and associated risk?

Response: The Agency has determined that industry practices are moving toward increased use of control measures (liners, covers, etc.) and groundwater monitoring.

The Agency's data on current practices indicate that industry is moving toward an increased use of control measures (e.g., liners, covers) and groundwater monitoring. For example, the RTC noted that before 1975, less than 20 percent of units (surface impoundments and landfills) in the United States for which data were available had installed some form of liner. More recent data (EEI's Power Statistics Database, 1989) suggest that 13 to 29 percent of surface impoundments for which data are available, have some form of liner and that 41 to 43 percent of landfills have some form of liner. As the damage case and groundwater monitoring information suggests, most of the releases have occurred at older, unlined units. EPA has observed during site visits that newer units are generally lined. Furthermore, most newer utility waste management facilities have groundwater monitoring systems, and many also have leachate collection systems. Despite the positive trends in management of FFC wastes, some of these units may be sited with inadequate controls. Therefore, in addition to viewing industry management practices, EPA collected and evaluated information on the extent of current State and Federal regulation of coal-fired utility waste management.

Substep 2. Are current Federal and State regulatory controls adequate to address the management of the waste?

Response: Effluent limitations in the Clean Water Act regulations for steam electric power plants under 40 CFR part 423 require no discharge from new fly ash ponds. State programs are generally adequate and are improving, with most States now requiring permits and minimum design and operating criteria that would address likely risks. Additionally, Federal authorities exist to address site-specific problems posing threats to human health and the environment under RCRA Section 7003 and CERCLA Sections 104 and 106.

The RTC included information on coal-fired electric utility waste regulation in all 50 States. In updating this information, EPA conducted a review of States that were selected according to the high levels of ash generated in those States. This approach resulted in a study universe of 17 States that generate approximately 70 percent of all coal ash in the United States.

The data show that States have generally implemented more stringent regulations for FFC waste since 1983 (when the State regulation review was conducted for the RTC). Under developing State industrial solid waste management programs, coal-fired utilities are more frequently being required to meet waste testing standards, and waste management units often must comply with design and operating requirements (e.g., liners and groundwater monitoring standards).

Of the 17 States for which EPA updated the RTC data, 14 regulate coal-fired utility wastes as solid wastes, explicitly exempting them from hazardous waste regulation;[12] 16 States require offsite FFC waste management units to have some type of operating permit, with design and operating criteria varying by State; 12 have mandatory liner requirements, while three States provide for discretionary authority to impose liner requirements on a site-specific basis; 12 impose mandatory groundwater monitoring requirements on FFC waste disposal sites; and 16 impose final cover requirements. In addition, some States have been working to reduce the threat of groundwater and surface water contamination, by discouraging the use of wet management in ponds as a disposal practice (through permitting requirements and location restrictions). On the Federal level, National Pollutant Discharge Elimination System permits under the Clean Water Act regulate all direct discharges to surface water. Effluent limitations under 40 CFR part 423 govern steam electric power generating point sources and require no (zero) discharge to surface waters from new source fly ash transport waters (40 CFR 423.15(g)).

Considering industry's trend toward more protective waste management practices, the fact that State regulatory programs are generally adequate, and because Federal authorities exist that can address these wastes, EPA has concluded that current management practices and regulatory controls are adequate for managing the four large-volume FFC wastes.

[11] Characterization of Coal Creek Station Fly Ash for Utilization Potential, Energy and Environmental Research Center, February 1993 (see Docket No. F-93-FFCA-FFFFF).

[12] Of the remaining three States, two States establish requirements based on waste characteristics and one exempts these wastes from their solid and hazardous waste management program.

Substep 3. Would Subtitle C effectively address the problems associated with the waste without imposing significant unnecessary controls?

Response: The Agency has determined that it is unlikely that Subtitle C would effectively address the problems associated with the four large-volume fossil-fuel combustion wastes without imposing unnecessary controls.

After reviewing industry practices and current State and Federal regulation, EPA reviewed the alternative scenario of regulating the four large-volume FFC wastes under Subtitle C. First, it was recognized that coal combustion wastes rarely exceed the RCRA characteristics for hazardous waste, and therefore, that most coal combustion wastes would not be subject to Subtitle C controls unless they were listed as hazardous wastes. Furthermore, it was noted that even if these wastes were listed as hazardous, and therefore, regulated under Subtitle C, such an approach would be inappropriate for these wastes. A Subtitle C system would require coal combustion units to obtain a Subtitle C permit (which would unnecessarily duplicate existing State requirements) and would establish a series of waste unit design and operating requirements for these wastes, which would generally be in excess of requirements to protect human health and the environment. For example, if such wastes were placed in the Subtitle C universe, all ash disposal units would be required to meet specific liner and monitoring requirements. Since FFC sites vary widely in terms of topographical, geological, climatological, and hydrological characteristics (e.g., depth to groundwater, annual rainfall, distance to drinking water sources, soil type) and the wastes' potential to leach into the groundwater and travel to exposure points is linked to such factors, it is more appropriate for individual States to have the flexibility necessary to tailor specific controls to the site or region specific risks posed by these wastes.

EPA also reviewed the comments received in response to the 1988 RTC and the Notice. Comments received on the RTC showed unanimous support for EPA's initial recommendation that large-volume combustion wastes do not warrant regulation under RCRA Subtitle C. Specifically, the commenters felt that current Subtitle D criteria, together with existing State regulations, have proved adequate to protect human health and the environment. Furthermore, of the respondents to the Notice who addressed the recommendation that large-volume combustion wastes do not warrant regulation under Subtitle C, all agreed that the supplemental data support this recommendation.

For these reasons, EPA concludes that Subtitle C is inappropriate to address the problems associated with these wastes and that the site or region specific State approach is appropriate for addressing the limited human health and environmental risks involved with the disposal of FFC wastes. The Agency encourages States to continue to develop and implement site-specific approaches to these wastes. EPA believes that industry and the States should continue to review the appropriate management of these wastes. EPA will also consider these wastes during the Agency's ongoing assessment of industrial non-hazardous wastes under RCRA Subtitle D. Should the characteristics of the waste streams change as a result of implementation of any provisions of the Clean Air Act as amended in 1990, the Agency may choose to reexamine the exemption.

Step 3. What would be the operational and economic consequences of a decision to regulate a special waste under Subtitle C?

Although the analysis never reached this point, EPA's preliminary examination of potential costs under Subtitle C indicates that annual costs of full Subtitle C controls would range between $100 and $500 million per year. This assumes that these wastes would be listed as hazardous in RCRA part 261, subpart D. However, if these wastes were not listed, the wastes would often not be subject to Subtitle C, since they rarely test characteristically hazardous pursuant to part 261, subpart C. Subtitle C controls include groundwater monitoring, liners, leachate collection, closure/covers, dust control, financial assurance, location restrictions, and corrective action.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (Pub.L. 96–354), requires Federal regulatory agencies to consider the impact of rulemaking on "small entities." If a rulemaking will have a significant impact on small entities, agencies must consider regulatory alternatives that minimize economic impact.

Today's decision does not affect any small entity. Rather, it continues to exempt the four large-volume wastes from coal-fired electric utilities from regulation as hazardous wastes. Accordingly, this action will not add any economic burdens to any affected entities, small or large. Therefore, a regulatory flexibility analysis is not required. Pursuant to Section 605(b) of the RFA, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant impact on small entities.

VI. Regulatory Determination Docket

Documents related to this regulatory determination are available for inspection at the docket.

The EPA RCRA docket is located at the following address: United States Environmental Protection Agency, EPA RCRA Docket, room M2427, 401 M Street SW., Washington, DC 20460.

The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call the docket clerk at (202) 260–9327 to make an appointment.

Dated: August 2, 1993.

Carol M. Browner,

Administrator.

Appendix A—Analysis of and Responses to Public Comments on the Report to Congress

The 1988 Report to Congress: Wastes from the Combustion of Coal by Electric Utility Power Plants concluded with three recommendations. Comments on the RTC were largely organized in response to those recommendations. The summarized comments and EPA's response to those comments follow each recommendation, printed in bold below.

(1) EPA has concluded that coal combustion waste streams generally do not exhibit hazardous characteristics under current RCRA regulations. EPA does not intend to regulate under Subtitle C fly ash, bottom ash, boiler slag, and flue gas emission control wastes.

All respondents agreed with and supported the RTC's first recommendation that high-volume combustion wastes do not warrant regulation under Subtitle C. They concluded that current Subtitle D criteria, together with existing State regulations, have proved adequate to protect human health and the environment.

Several commenters claimed that the EP toxicity test is not a valid indication of the hazards associated with utility wastes since the test was designed to mimic conditions in acidic municipal landfills rather than homogeneous monofills used by electric utilities. They claim, therefore, that data from the EP test significantly overstate potential risks.

As noted in the RTC and by several commenters, the Bevill Exemption requires EPA to consider eight factors (Section 8002(n)) in determ ining

whether hazardous waste regulation is warranted for fossil-fuel combustion wastes. To that end, EPA has developed the methodology identified in the Notice that takes into account all of these factors. While waste characterization data, including the results of EP toxicity testing as well as other leaching procedures (TCLP, ASTM, and batch/column) are considered in the decision, they are not the sole basis for determining whether to regulate FFC wastes as hazardous. The methodology specifically focuses on the risks posed by FFC wastes as they are actually managed.

EPA acknowledges that EP toxicity test results may not always represent the leaching potential of hazardous constituents from FFC wastes. However, some ash is (or could be) managed in offsite Subtitle D landfills. Furthermore, EPA has found significant variability in the leaching characteristics of FFC wastes, depending on the fossil-fuel source and boiler operating conditions. Therefore, EPA believes that consideration of EP toxicity data, in conjunction with the results of other leaching studies and data on the actual environmental impacts of waste management practices, is appropriate. Finally, EPA's data show that EP toxicity test results for the four large-volume wastes are not inconsistent with leach tests conducted using ASTM, batch/column, and TCLP methods (see February, 1988 RTC).

(2) EPA is concerned that several other wastes from coal-fired utilities may exhibit the hazardous characteristics of corrosivity or EP toxicity and merit regulation under Subtitle C. EPA intends to consider whether these waste streams should be regulated under Subtitle C of RCRA based on further study and information obtained during the public comment period.

Nineteen of the twenty-two respondents commented on the RTC's second recommendation to study low-volume wastes further and consider regulating these wastes under RCRA Subtitle C. All 19 respondents disagreed with the recommendation to regulate any low-volume wastes under Subtitle C.

Several commenters claimed that insufficient data existed to support a Regulatory Determination for low-volume wastes. EPA concurs with these comments. The Agency intends to study co-managed low-volume wastes further to obtain sufficient data to make a Regulatory Determination. Low-volume wastes managed independently are outside the scope of the Bevill Exemption.

Many comments maintained that Subtitle C regulation is not warranted for low-volume wastes co-managed with large-volume coal combustion wastes. Some commenters claimed that the predominant industry practice is to co-dispose of low-volume wastes in ash or FGD sludge ponds (several commenters referenced the 1985 Radian study and the 1982 Envirosphere report). Such co-management was claimed to be practical, effective, and environmentally sound. The report acknowledges that this practice may reduce the potential hazard of low-volume wastes, by neutralization or dilution. Commenters emphasized that no adverse environmental impacts from the co-disposal of high-volume and low-volume wastes have been shown in studies by the electric utility industry and EPA and that none were cited in the RTC.

EPA acknowledges that the RTC contained very limited information on the extent and potential environmental impacts of co-management of low-volume wastes with ash, slag, and FGD wastes. In fact, although the Agency has information verifying that co-management does occur, there is limited information clarifying the amounts and types of co-management. Indeed, this was the reason EPA reached no tentative conclusions regarding these practices. Comprehensive studies were available for fewer than five of the hundreds of existing co-management sites. EPA's efforts to compile more recent data continue to show limited information on the effects of co-management. However, some information suggests that at several large-volume waste management sites where groundwater impacts have been detected (see data in the RCRA Docket), the operators have suggested that the cause of the contamination is co-management with low-volume wastes. Of specific concern are pyrites and chemical boiler cleaning wastes. Further, the Agency has observed that the general trend in the industry is to segregate certain low-volume wastes (i.e., pyrites, boiler cleaning wastes, and demineralizer regenerant) from ash, slag, and FGD sludge.

The Agency believes that additional data collection for the low-volume wastes co-managed with the large-volume wastes described in the report is required and is deferring a final Regulatory Determination for co-managed wastes, pending completion of further studies. Co-managed low-volume wastes remain exempt from hazardous waste regulation, however, until such a determination is made. As required under the Bevill Exemption, the Agency emphasizes that the decision on remaining wastes will be based on all Section 8002(n) study factors, not on waste characterization data alone.

As discussed in the scope section of this determination, the Agency does not consider process waters (e.g., non-contact cooling water and low-pressure service water) used in ash handling or FGD systems to be wastes. Also, the continuous use of these process waters as feedwater for emission control systems or for ash transport generally will not increase the environmental risks associated with the wastes relative to the risks derived from utilization of fresh water for the same purposes. Discouraging such practices may lead to an increased usage of fresh water for the same purposes, thereby increasing the total volume of water exposed to the large-volume wastes as well as the total volume of waste generated. The Agency believes that this would be an undesirable outcome of today's action. For these reasons, the Agency does not consider the practice of using these non-contact process waters in ash sluicing systems or as makeup water for FGD systems to constitute co-management.

One commenter thought that the limitations applied to discharges of pollutants from ash disposal facilities under the National Pollutant Discharge Elimination System adequately protect the environment and that additional regulations would be redundant.

The Agency does not concur with the commenter that meeting NPDES permit limits at surface water discharge points alone is necessarily adequate to ensure groundwater protection. For example, FFC waste management units may not have surface water discharges, and, therefore, might not be required to have NPDES permits. Even if NPDES-permitted, these units may generate leachate that could affect underlying groundwater. Although some States may use Federal NPDES permit requirements to protect groundwater resources, the Clean Water Act and the NPDES program generally focus on protecting surface water quality.

One commenter referred to a 1976 study conducted by an electric utility company in which both bench (laboratory) and field tests were conducted. The purpose of the study was to demonstrate to EPA, for purposes of meeting the effluent limitations of a NPDES permit, that co-disposal of two boiler cleaning wastes with ash in ash ponds provided treatment equivalent to that available from a dedicated waste treatment facility. The bench tests showed 99 percent treatment for metals The commenter maintained that the

low-volume wastes were effectively treated without any increase in risk from the high-volume wastes (and the waste management unit) into which they were added.

EPA acknowledges that the referenced study does demonstrate that a level of Ph adjustment can be achieved over a period of time so that NPDES permit limits can be met. However, the study does not address protection of the groundwater underlying the impoundment. Further, the study provides data for only two types of boiler cleaning solution mixed with ash from a single plant. Because of the variability in types of boiler cleaning solutions and ash characteristics and the relative paucity of data on low-volume wastes and co-management in general (and the consequent uncertainty related to the environmental impacts of co-management), the Agency believes that further study is required.

Several commenters claimed that EPA appeared to have selectively included data from EP test results for boiler cleaning wastes and other low-volume waste streams in the RTC (Exhibits 5–5 and 5–6). Exhibit 5–5 (taken from the 1985 Radian study) presents test results for two treated and three untreated boiler cleaning waste streams. The commenters noted that the Radian study sets forth data for four untreated and four treated waste streams. None of the results for the streams omitted in the report exceeds the EP toxicity limits. To the extent that only the untreated waste streams for which an exceedence was shown are included in the report, the commenters maintained that observations on those results are overstated.

In addition, the commenters felt that the report was similarly selective in reporting "EP Toxicity Test Results for Liquid Low-Volume Wastes" (taken from the 1987 Radian study) shown in Exhibit 5–6. Where the original data included 17 boiler cleaning wastes and 7 waterside rinse tests, the report included only 10 boiler cleaning wastes and 3 waterside wastes in Exhibit 5–6. Additionally, by omitting the "less than" sign next to many of the values, there was concern that the report gives a false impression that a reading is a positive value, when actually the value was below the detection limit. It was also pointed out that this omission factors into the calculation of the geometric mean for the samples.

EPA acknowledges the comments. The intent was not to overstate or overemphasize the frequency or magnitude of observed concentrations of constituents in leachate. Rather, EPA was attempting simply to present data that illustrated the concentrations that could be observed. In its Regulatory Determination on the wastes, EPA considered all data (including non-detects), rather than only selected observations.

One commenter noted that the boiler cleaning wastewaters from the initial acid wash stage and subsequent rinses should not be considered separately because they are typically combined and managed together as a single waste stream. The commenter noted that the report shows these fluids as separate waste streams and includes data for each stream in Exhibit 5–6. If the data were collected on these fluids as a unified stream, the commenter claimed that the resulting boiler cleaning waste would likely not, exceed any of the current limits for EP toxicity.

The commenter went on to say that even if certain boiler cleaning wastes may, in certain circumstances, test hazardous as generated, this fact should not trigger Subtitle C regulation. The commenter emphasized that co-disposed boiler cleaning waste does not present a hazard and that this critical fact is acknowledged in the RTC.

The Agency has found that some utilities do manage the wastes generated during different stages of the waterside boiler tube cleaning operations separately, at least for some period of time. Therefore, the Agency believes that it is appropriate to consider waste characterization data for the distinct streams (as well as for combined streams). As noted previously, the Agency does not believe that the RTC and other currently available information provide sufficient data to complete a Regulatory Determination for boiler chemical cleaning wastes co-managed with large-volume wastes at this time.

One commenter cited data on 17 untreated waterside boiler cleaning wastes (which include ethylene-diamine-triacetic acid (EDTA), hydroxyacetic-formic acid, and ammoniated bromate and hydrochloric acid). Only one sample (or 5.8 per cent) showed an exceedence of the EP limits, for total lead with a concentration of 6.67 mg/l. The average lead concentration for all 17 samples was 1.43 mg/l with a median value of 0.5 mg/l. None of the 17 waterside boiler cleaning waste samples was corrosive.

Another commenter cited company data for 69 samples of waterside boiler cleaning wastes (which include EDTA, hydroxyacetic-formic acid, and citric acid). Among these samples, only 15 (or 22 percent) showed exceedences of the EP limits. Thirteen of these exceedences were for total chromium and two were for total lead. The average total chromium concentration for all 69 samples was 3.41 mg/l with a median value of 2.08 mg/l. The average total lead concentration was 1.23 mg/l with a median value of 0.56 mg/l. The commenter emphasized that these values were all considerably less than those cited in the RTC.

In addition, the company tested several of the same waterside boiler cleaning wastes for hexavalent chromium under the EP toxicity test procedure. Of the 16 samples so tested, only 1 showed a concentration of hexavalent chromium above the detection limit of 0.02 mg/l. Two of the 16 tested samples, exceeded 5.0 mg/l for total chromium concentrations. All 17 of the other samples showed concentrations of hexavalent chromium below the detection limit.

EPA acknowledges these comments and would welcome the opportunity to review any additional data. The averages for lead and chromium cited by the commenters are indeed lower than those cited in the RTC. However, because some boiler cleaning chemicals appear to exhibit hazardous waste characteristics and the data on the impacts of their management with large-volume wastes are limited, the Agency believes further study is necessary before a final regulatory determination is made.

Several commenters claimed that the costs of managing low-volume wastes under Subtitle C would be very high. Some commenters felt that such management would necessitate transporting these wastes offsite, thereby posing risks of environmental releases without significant environmental benefit. Other commenters observed that continuing to manage these wastes onsite would require that the disposal facilities become treatment, storage, or disposal facilities.

As noted previously, EPA is deferring a final determination on low-volume wastes co-managed with the four large-volume wastes, pending additional data collection. As necessary and in accordance with the Section 8002(n) study factors, EPA will consider the potential cost impacts in making a determination for these wastes. Low-volume wastes managed independently are not and never have been within the scope of the Bevill Exemption.

The Agency also recognizes that transporting hazardous wastes may pose risks of environmental releases. However, regulations have been developed to ensure that hazardous wastes are transported in a manner

sufficient to protect human health and the environment (see 40 CFR § 263).

Many commenters stated that when low-volume wastes are co-managed with high-volume wastes, the Bevill Amendment forbids EPA from regulating them until the Agency addresses each of the Section 8002(n) factors in its study and bases its determination on all of those factors. These commenters maintained that EPA may not rely solely on the outcome of a waste characteristic test as the basis of its Regulatory Determination regarding these wastes and this management process. They went on to say that the record assembled in the Report to Congress presents no evidence of environmental risk associated either with this co-management practice or with the co-disposed wastes and contains no information or findings as to many of the remaining Section 8002(n) factors.

For the reasons cited above, the data are insufficient to assess fully the potential risks associated with present co-disposal practices. As discussed, EPA does not intend to rely solely on waste characterization data as the basis of its Regulatory Determination for remaining wastes. The Agency acknowledges that many of the 8002(n) study factors have not been considered for low-volume wastes co-managed with high-volume wastes. EPA plans to address these study factors before we make a final regulatory determination on these wastes.

(3) EPA encourages the utilization of coal combustion wastes as one method for reducing the amount of these wastes that need to be disposed to the extent that such utilization can be done in an environmentally safe manner.

While all respondents agreed with the RTC's third recommendation encouraging coal combustion waste utilization, several qualifying comments were received.

One commenter noted that, while the RTC is correct in requiring that utilization to be done in an environmentally safe manner, Congress needs to be equally concerned that waste utilization is done in a structurally safe manner. This commenter claimed that the RTC's assertion, "all types of coal ash are appropriate for use as construction materials, as cement additives, and for several other uses," is entirely erroneous. The commenter stated that the RTC contradicts this statement further on by delineating some of the reasons why some fly ashes are not appropriate for use in construction. All materials used in engineering construction work are required to comply with appropriate ASTM standards. Regarding utilization in concrete, the commenter felt that the RTC must cite the appropriate ASTM Standard C618.

EPA acknowledges and agrees with the comment. However, it is not within EPA's authority to mandate structural requirements, except where they may affect the potential for environmental impacts.

In a recommendation on utilization, one commenter pointed out that the RTC encourages this practice "to the extent that it can be done in an environmentally safe manner." The commenter cited the report's statement that "current waste utilization practices appear to be done in an environmentally safe manner." The commenter claims that there is no delineation between practices that are environmentally safe and ones that are not environmentally safe.

To date, and using the limited data available, the Agency has not found any environmental damages associated with the utilization of large-volume coal-fired utility wastes. However, the Agency agrees with the commenter that utilization of coal combustion wastes should be done in a manner fully protective of the environment and consistent with existing Federal and State regulations.

Several commenters disagreed with the RTC where it stated that the potential for significantly increasing the amount of waste utilization may be limited. Given current utilization techniques, the report predicts that the major portion of coal combustion wastes will continue to be land disposed. Some commenters felt that reluctance toward waste utilization is largely due to the stigma of classifying the by-products as "waste" and that EPA should remove "beneficially used coal ash" from the definition of "solid waste".

Some commenters also noted that in enacting RCRA, Congress intended that EPA take a more active role in resource conservation and recovery. They thought EPA should give stronger support for additional use and market development with the emphasis placed on large-volume utilization. It was noted that some States have exempted ash for reuse from their solid waste programs and recommended that the Agency support State efforts to authorize the use of coal combustion by-products.

These commenters claimed that considerable attention was directed to limited cases of adverse impact in the RTC. They maintained that EPA should acknowledge in its Regulatory Determination that a selective ash characterization program coupled with good engineering practice would ensure environmental acceptability of large-volume ash applications. The Agency should take a leadership role by issuing procurement guidelines related to the use of coal ash in high-volume applications within the transportation and construction industries. Such high-volume applications would include the use of coal ash as structural fills, road embankments, and backfills.

The Agency notes that Congress specifically mandates in RCRA Section 8002(n) that the Agency consider the cases of adverse impact. The Agency encourages utilization of coal combustion byproducts and supports State efforts to promote utilization in an environmentally beneficial manner. EPA notes that the Agency has issued a procurement guideline to encourage the use of fly ash in cement and concrete in Federal projects (see 48 FR 4230, January 28, 1984). The Agency prefers to allow States the flexibility to develop their own approaches to fostering utilization. The individual states are in the best position to determine what types of utilization are appropriate for their environmental settings.

Appendix B—Analysis of and Responses to Public Comments on the Notice of Data Availability

On February 12, 1993, the Agency issued a Notice of Data Availability (Notice) requesting comment on additional data on fossil-fuel combustion (FFC) wastes. These data are intended to update and supplement the materials presented in the 1988 Report to Congress on Wastes from the Combustion of Coal by Electric Utility Power Plants (RTC). In addition, the Notice solicited comment on the proposed methodology to be used in completing the August 1993 regulatory determination.

Comments were received from 14 parties. Several commenters also submitted additional published materials on FFC waste characteristics and management/treatment techniques. The Agency considered these materials in completing the regulatory determination, as appropriate.

The following discussion briefly summarizes the comments received on the additional data and the proposed methodology. The Agency's responses are also provided. The comments and responses have been grouped according to general topic areas.

Methodology: Several commenters supported the use of EPA's proposed three-step methodology for completing the FFC waste regulatory determination. No commenters disagreed with any aspect of the methodology.

Fly Ash, Bottom Ash, Boiler Slag, and FGD Waste: Nearly all respondents indicated that the Notice documents supported the 1988 RTC's recommendation that large-volume combustion wastes do not warrant regulation under Subtitle C. No commenters disagreed with this recommendation.

The Agency concurs with the commenters that the information contained in the docket does not contradict the data presented in the RTC. The Notice documents update and supplement the RTC by providing additional data on waste characteristics, environmental monitoring, and environmental impacts.

Several commenters noted that State regulation of FFC waste management has become more stringent since the 1988 RTC. More stringent solid waste regulations, including waste testing requirements and design- and performance-based standards, were specifically cited.

The Department of Energy and the EPA have recently completed separate studies of the current level of State regulation of FFC wastes. Proceeding from the findings of these studies, the Agency concurs with the commenters that State requirements have generally become more stringent since 1983 (when the data cited in the 1988 RTC were collected). EPA supplemented the 1983 data for all 50 States with an updated analysis of 17 States representing all geographic regions of the United States and generating approximately 70 percent of the Nation's coal ash. As noted in the preamble to the regulatory determination, this study showed that States are imposing additional controls to ensure the proper management of these wastes.

One commenter felt that there is the potential for groundwater degradation from these coal combustion residues as a result of their leaching potential, although regulation of these wastes under Subtitle C is not appropriate. The inherent high permeability of materials landfilled without the benefit of stabilization or liners could allow a large volume of percolation to occur, resulting in potential groundwater contamination. The commenter urged the Agency to eliminate questionable coal combustion waste impoundments and suggested that regulations similar to 40 CFR part 258 (requirements for municipal solid waste landfills) would be appropriate for FFC waste management units.

While the Agency believes that design and operating requirements similar to part 258 may be appropriate for some FFC waste management units, the risks posed by FFC waste management are site-specific. Although groundwater contamination has occurred at certain coal combustion waste sites, contamination has been due to a limited number of constituents, which are likely to attenuate and dilute to safe levels before reaching an exposure point. This is in contrast to municipal solid waste landfills that are subject to 40 CFR part 258. The leachate at these sites often contains elevated levels of a wide range of toxic pollutants, and numerous damages have been observed. Therefore, the Agency believes that the level of protection provided by the part 258 criteria may not need to be universally applied to all FFC waste management units. It is therefore appropriate to allow the States to retain the flexibility to tailor requirements to site-specific or regional factors rather than establish broad Federal minimum requirements. It should be noted that many States have adopted regulatory requirements for FFC waste management units comparable to the part 258 criteria. EPA will consider these wastes as part of the Agency's ongoing assessment of industrial non-hazardous wastes under RCRA Subtitle D.

Low-Volume Wastes and Co-Management: Five of the fourteen respondents supported permanently retaining the exemption for low-volume coal-fired utility wastes co-managed with large-volume wastes. These commenters indicated that the 1988 RTC and Notice data show that co-management is an environmentally sound management practice. One commenter specifically cited two Electric Power Research Institute (EPRI) studies completed since 1988 as demonstrating that co-managed wastes should be excluded.

EPA's efforts to compile more recent data continue to show limited information on the effects of co-management. However, some information included in the Notice docket suggests that at several large-volume waste management sites where groundwater impacts have been detected, the operators have suggested that the cause of the contamination is co-management with low-volume wastes. Of specific concern to the Agency is co-management of ash, slag, and FGD waste with pyrites and/or chemical boiler cleaning wastes.

The Agency does not believe that the two recent co-management studies cited by the commenter are conclusive or sufficiently representative of the entire universe of co-management sites. For example, at one site, EPRI findings indicate that a release is occurring because of pyrite co-disposal. The release is localized by site-specific conditions (i.e., alkaline soils) that may not be found at every facility. Similarly, a release is also occurring at the second site. While migration of constituents with primary drinking water standards is limited, boron and sulfate have been detected in downgradient wells.

Low-volume wastes co-managed with large-volume wastes remain exempt pending additional study. Separately managed low-volume wastes are outside the scope of the exemption, as noted by one commenter representing a large part of the industry. The same commenter in responding to the RTC cited RCRA Section 3001(b)(3)(i) and a January 13, 1981, letter from G. Dietrich, U.S. EPA, to P. Emler, Utility Solid Waste Activities Group, as indicating that the Bevill Exemption applies only to low-volume wastes when they are co-managed with the four large-volume.[13]

However, the Agency cautions that the limited data available to date indicate that co-management of some large-volume wastes with pyrites and chemical boiler cleaning wastes can cause adverse environmental impacts. Pending the study of low-volume wastes co-managed with large-volume wastes, the Agency will continue to rely on its authorities pursuant to RCRA Section 7003 as well as its Superfund authorities under CERCLA Sections 104 and 106, to address any human health and environmental threats associated with the co-management of these wastes.

Several commenters emphasized that low-volume wastes are typically co-managed with ash, slag, and FGD wastes.

The Agency has observed that the general trend in the industry is to segregate certain low-volume wastes (e.g., boiler chemical cleaning wastes) from ash, slag, and FGD wastes. At some plants, low-volume wastes, such as pyrites and chemical boiler cleaning wastes, are now being disposed of separately. As indicated above, the Agency believes that additional study is required to evaluate the risks posed by co-management of the low-volume wastes with the large-volume wastes.

Reutilization: One commenter noted that in enacting RCRA, Congress intended that EPA take an active role in resource conservation and recovery. The commenter indicated that some States have developed overly stringent regulatory requirements that have

[13] Comments dated May 16, 1988, received from USWAG on the RTC and comments dated March 29, 1993, received from USWAG on the Notice (see Docket numbers F-88-PATA-FFFFF and F-93-FFCA-FFFFF).

discouraged reuse of FFC wastes. Several commenters recommended that, in the Regulatory Determination, EPA should recognize coal combustion byproducts as beneficial resources rather than as waste materials.

Because, according to the RTC, the majority of coal combustion byproducts are currently managed as wastes rather than re-used (because, in part, of market conditions as well as regulatory status), the Agency believes it is appropriate to consider them waste materials. However, the Agency continues to encourage reutilization of coal combustion byproducts and supports State efforts to promote reutilization in an environmentally beneficial manner. In terms of exempting coal combustion wastes from the definition of solid waste, because this determination is confined to the issue of whether to regulate those wastes as hazardous, this request is outside the scope of today's action. The Agency, however, is currently engaging in an effort to revise the definition of solid waste. In April 1993, EPA's Definition of Solid Waste Task Force held a public meeting in Washington, DC. The task force plans to hold a series of monthly open meetings from July through November 1993, which will provide a forum for the public to provide input on the definition of solid waste.

Comments Related to Specific Documents:

Two commenters suggested that three documents in the docket addressing the Gavin Power Plant were added in error and should not be considered in the regulatory determination because they deal with the investigation of groundwater constituents (volatile organic compounds (VOCs)) that are unrelated to the management of coal combustion byproducts.

The Agency recognizes that the source of the VOC contamination at the Gavin site is unlikely to have been coal combustion wastes. These documents were included in the docket only to provide a complete understanding of groundwater conditions, including background levels, at the site.

Site Visit Reports: One commenter provided comments on EPA's site visit report for the Cayuga Power Station, PSI Energy, Incorporated. The commenter's specific remarks and the Agency's responses are summarized below:

One commenter noted that the Cayuga site visit report incorrectly assumes that all data in Table 5 are from downgradient wells. The commenter suggests that the maximum arsenic and vanadium values above background were actually detected in an ash well (PZ-14), rather than with a soil core system. Because of this, the commenter concludes that no adverse impact on groundwater has occurred.

In response, CPZ-14 is specifically identified in EPRI's Report on the Cayuga site (see Comanagement of Coal Combustion By-product and Low-Volume Wastes: Midwestern Sites, EPRI Report EN-7545) as a downgradient well, and arsenic and vanadium were found above background levels in the sediments immediately underlying the ash pond. The Agency acknowledges that any release of these constituents is limited because they were not found in other wells. It should further be noted that other constituents, including sulfate and boron, have consistently been found above background levels in several downgradient wells.

One commenter stated that the Cayuga site visit report overemphasizes the lack of background groundwater monitoring data, because the actual downgradient groundwater data show no adverse impacts.

The report only indicates which parameters appear to be above background levels and notes that the limited background data make any data analysis difficult. The site visit report does not comment on whether the data show any adverse impacts associated with the ash management unit.

One commenter noted that total constituent and hydroxylamine extraction coal ash data presented in the EPRI study and the Cayuga site visit report should not be used to consider the actual leaching potential.

These data were included in the site visit report because they were the only waste characterization data available for the Cayuga site (no other leaching studies were performed). The Agency recognizes that the hydroxylamine extraction test provides a "worst case" estimate of the potential for constituent mobilization and would likely overestimate actual leachability. The Agency emphasizes that the proposed three-step methodology not only considers waste characterization information, but also the actual risks posed by a waste in its "as managed" state.

One commenter noted that the new groundwater monitoring data included in the Notice docket show few exceedences of primary drinking water standards. Most exceedences of primary drinking water standards occurred at older sites that are atypical of current sites. Exceedences of Secondary Drinking Water Standards occur more frequently, but the percentage of sites involved is still low. The commenter noted that exceedences of SDWSs are not violations of a Federal standard requiring enforcement or of most State standards, since SDWSs are guidelines. Further, exceedences would likely not occur if the relevant point of compliance were set further from the site (e.g., 150 meters downgradient as in the municipal solid waste landfill rules). Finally, the commenter indicated that many elevated constituent levels could be attributable to natural or other non-coal ash related sources (data were cited from several sites). Another commenter suggested that the data show that the potential exists for groundwater degradation through migration of constituents with SDWSs (e.g., iron, sulfates, chlorides, and other soluble salts).

The Agency disagrees that the new docket materials show a low percentage of exceedences of both PDWSs and SDWSs. Of the 49 individual sites with groundwater monitoring information (summarized in Appendix D of the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste, found in the docket), 19 had at least one exceedence of a PDWS, and 42 had at least one exceedence of a SDWS.

The Agency concurs that some of these exceedences of PDWSs could be due to contamination from other sources and that dilution and attenuation would tend to reduce contaminant concentration below levels of concern at receptors. While the Agency recognizes that SDWS exceedences are not always considered violations, elevated levels of secondary parameters can cause adverse impacts. Therefore, the Agency has considered the mobility of these parameters in determining the risks posed by FFC waste management. Acknowledging the results of this analysis, the Agency concurs that many newer units have been designed to prevent releases (i.e., with liners), releases are frequently localized by site-specific conditions such that contaminants do not reach receptors, and exceedences are sometimes caused by natural or non-coal ash related sources (often for chlorides, iron, and manganese). Finally, although much of the data is from older sites, many of these sites are currently active; therefore, they cannot be regarded as categorically atypical.

[FR Doc. 93-18975 Filed 8-6-93; 8:45 am]

BILLING CODE 6560-50-P

Reader Aids

Federal Register

Vol. 58, No. 151

Monday, August 9, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, AUGUST

41023–41170 2
41171–41420 3
41419–41620 4
41621–41980 5
41981–42186 6
42187–42482 9

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12856 41981
12857 42181
12858 42185

Proclamations:
6583 41169

5 CFR

Ch. XL 41989
550 41623

Proposed Rules:
Ch. 21 41193

7 CFR

28 41991
29 42408
52 42408
55 42408
58 42408
59 42408
61 42408
70 42408
90–159 42408
180 42408
319 41124
911 42187
915 42187
944 41124
1211 41023
1427 41994
1435 41995
1446 41625
1728 41394
1755 41394
1980 41171
3015 41410
3051 414102

Proposed Rules:
800 41439
801 42257
1030 42258
1211 41203
1413 41641

9 CFR

317 42188
318 ..... 41138, 42188
320 41138
381 42188

Proposed Rules:
82 41048
92 ..... 41204, 41623
94 41623

10 CFR

766 41160

Proposed Rules:
Ch. I 42032
12 41061
765 42450
766 41164

11 CFR

102 42172
110 42172

12 CFR

703 41419

13 CFR

Proposed Rules:
107 ..... 41852, 41882

14 CFR

23 42136
39 ..... 41172, 41174, 41175, 41177, 41179, 41419, 41421, 42190, 42192, 42194, 42196, 42197
71 41181
73 42001

Proposed Rules:
39 ..... 41066, 41210, 41441, 41442, 41444, 41645, 42032, 42034, 42259, 42261, 42262, 42361
71 ..... 41211, 41212, 42037, 42038
73 41214
255 41068

15 CFR

30 41422

Proposed Rules:
295 41069
500 41215

16 CFR

306 41356
308 42364

17 CFR

1 42361

18 CFR

2 41626

Proposed Rules:
36 41074
284 41647

19 CFR

4 41422
101 41633
122 41422

20 CFR

416 41181

21 CFR

5 41634
14 41635

73.....41024, 41182, 41183
74.....41183
210.....41348
211.....41348
520.....41024
524.....41024
Proposed Rules:
103.....41612

23 CFR

1200.....41025
1204.....41025
1205.....41025

24 CFR

50.....41328
200.....41328
203.....41328
204.....41328
791.....41426
Proposed Rules:
200.....41445

26 CFR

1.....42199
602.....42199
Proposed Rules:
1.....42263

28 CFR

16.....41038

29 CFR

102.....42234

30 CFR

718.....41936
720.....41936
735.....41936
914.....41039
917.....42001
Proposed Rules:
914.....41669

31 CFR

Proposed Rules:
206.....41902
209.....41449

32 CFR

Proposed Rules:
246.....41671
296.....41679

33 CFR

100.....41428
175.....41602
181.....41602
334.....42237
Proposed Rules:
100.....41449

38 CFR

3.....41635
21.....41636
Proposed Rules:
21.....41325

39 CFR

111.....42012

40 CFR

52.....41430
141.....41344
186.....41430
261.....42238, 42466
Proposed Rules:
52.....41218, 41451
88.....42266
122.....42266
123.....42266
131.....42266
132.....42266
180.....41452

41 CFR

101–26.....41637

42 CFR

Proposed Rules:
63.....42039
435.....42041
436.....42041
441.....42041

43 CFR

3730.....41184
3820.....41184
3830.....41184
3833.....41325
3850.....41184
Public Land Orders:
6990.....42245
6991.....42245
6992.....42246

44 CFR

Proposed Rules:
351.....41154

45 CFR

301.....41432
303.....41432
Proposed Rules:
57a.....42270

46 CFR

160.....41602
Proposed Rules:
502.....42273

47 CFR

0.....41042
1.....42247
21.....42013, 42247
25.....42247
61.....42251, 42253
64.....42253
69.....41184, 42253
73.....41045, 41046, 41638, 42013, 42020, 42247
74.....42020, 42247
76.....41042, 41013, 42247
100.....42247
Proposed Rules:
21.....42047
73.....41680, 41681
76.....42047, 42275

48 CFR

709.....42254
726.....42254
737.....42254
752.....42254

49 CFR

571.....41638
1000.....41989
1019.....42026
1102.....42026
Proposed Rules:
531.....41228
552.....41077
571.....41078
594.....41681
1002.....42276
1312.....41684, 42276, 42277

50 CFR

17.....41378, 41384
215.....42027
216.....42030
625.....41191
646.....41438
661.....42030
672.....41438, 41191, 41640, 42255, 42256
675.....41325, 42031
Proposed Rules:
17.....41231, 41237, 41684, 41688, 41690, 41696, 41700
226.....41454

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 63/P.L. 103–63

Spring Mountains National Recreation Area Act (Aug. 4, 1993; 107 Stat. 297; 5 pages)

H.R. 236/P.L. 103–64

To establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes. (Aug. 4, 1993; 107 Stat. 302; 9 pages)

Last List August 6, 1993

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $775.00 domestic, $193.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 783–3238 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2233.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-019-00001-1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869-019-00002-0)	17.00	[1] Jan. 1, 1993
4	(869-019-00003-8)	5.50	Jan. 1, 1993
5 Parts:			
1-699	(869-019-00004-6)	21.00	Jan. 1, 1993
700-1199	(869-019-00005-4)	17.00	Jan. 1, 1993
1200-End, 6 (6 Reserved)	(869-019-00006-2)	21.00	Jan. 1, 1993
7 Parts:			
0-26	(869-019-00007-1)	20.00	Jan. 1, 1993
27-45	(869-019-00008-9)	13.00	Jan. 1, 1993
46-51	(869-019-00009-7)	20.00	Jan. 1, 1993
52	(869-019-00010-1)	28.00	Jan. 1, 1993
53-209	(869-019-00011-9)	21.00	Jan. 1, 1993
210-299	(869-019-00012-7)	30.00	Jan. 1, 1993
300-399	(869-019-00013-5)	15.00	Jan. 1, 1993
400-699	(869-019-00014-3)	17.00	Jan. 1, 1993
700-899	(869-019-00015-1)	21.00	Jan. 1, 1993
900-999	(869-019-00016-0)	33.00	Jan. 1, 1993
1000-1059	(869-019-00017-8)	20.00	Jan. 1, 1993
1060-1119	(869-019-00018-6)	13.00	Jan. 1, 1993
1120-1199	(869-019-00019-4)	11.00	Jan. 1, 1993
1200-1499	(869-019-00020-8)	27.00	Jan. 1, 1993
1500-1899	(869-019-00021-6)	17.00	Jan. 1, 1993
1900-1939	(869-019-00022-4)	13.00	Jan. 1, 1993
1940-1949	(869-019-00023-2)	27.00	Jan. 1, 1993
1950-1999	(869-019-00024-1)	32.00	Jan. 1, 1993
2000-End	(869-019-00025-9)	12.00	Jan. 1, 1993
8	(869-019-00026-7)	20.00	Jan. 1, 1993
9 Parts:			
1-199	(869-019-00027-5)	27.00	Jan. 1, 1993
200-End	(869-019-00028-3)	21.00	Jan. 1, 1993
10 Parts:			
0-50	(869-019-00029-1)	29.00	Jan. 1, 1993
51-199	(869-019-00030-5)	21.00	Jan. 1, 1993
200-399	(869-019-00031-3)	15.00	Jan. 1, 1993
400-499	(869-019-00032-1)	20.00	Jan. 1, 1993
500-End	(869-019-00033-0)	33.00	Jan. 1, 1993
11	(869-019-00034-8)	13.00	Jan. 1, 1993
12 Parts:			
1-199	(869-019-00035-6)	11.00	Jan. 1, 1993
200-219	(869-019-00036-4)	15.00	Jan. 1, 1993
220-299	(869-019-00037-2)	26.00	Jan. 1, 1993
300-499	(869-019-00038-1)	21.00	Jan. 1, 1993
500-599	(869-019-00039-9)	19.00	Jan. 1, 1993
600-End	(869-019-00040-2)	28.00	Jan. 1, 1993
13	(869-019-00041-1)	28.00	Jan. 1, 1993
14 Parts:			
1-59	(869-019-00042-9)	29.00	Jan. 1, 1993
60-139	(869-019-00043-7)	26.00	Jan. 1, 1993
140-199	(869-019-00044-5)	12.00	Jan. 1, 1993
200-1199	(869-019-00045-3)	22.00	Jan. 1, 1993
1200-End	(869-019-00046-1)	16.00	Jan. 1, 1993
15 Parts:			
0-299	(869-019-00047-0)	14.00	Jan. 1, 1993
300-799	(869-019-00048-8)	25.00	Jan. 1, 1993
800-End	(869-019-00049-6)	19.00	Jan. 1, 1993
16 Parts:			
0-149	(869-019-00050-0)	7.00	Jan. 1, 1993
150-999	(869-019-00051-8)	17.00	Jan. 1, 1993
1000-End	(869-019-00052-6)	24.00	Jan. 1, 1993
17 Parts:			
1-199	(869-019-00054-2)	18.00	Apr. 1, 1993
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-019-00058-5)	19.00	Apr. 1, 1993
280-399	(869-019-00059-3)	15.00	Apr. 1, 1993
400-End	(869-019-00060-7)	10.00	Apr. 1, 1993
19 Parts:			
1-199	(869-019-00061-5)	35.00	Apr. 1, 1993
200-End	(869-019-00062-3)	11.00	Apr. 1, 1993
20 Parts:			
1-399	(869-019-00063-1)	19.00	Apr. 1, 1993
400-499	(869-019-00064-0)	31.00	Apr. 1, 1993
500-End	(869-019-00065-8)	30.00	Apr. 1, 1993
21 Parts:			
1-99	(869-019-00066-6)	15.00	Apr. 1, 1993
100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-019-00068-2)	20.00	Apr. 1, 1993
200-299	(869-019-00069-1)	6.00	Apr. 1, 1993
300-499	(869-019-00070-4)	34.00	Apr. 1, 1993
500-599	(869-019-00071-2)	21.00	Apr. 1, 1993
600-799	(869-019-00072-1)	8.00	Apr. 1, 1993
800-1299	(869-019-00073-9)	22.00	Apr. 1, 1993
1300-End	(869-019-00074-7)	12.00	Apr. 1, 1993
22 Parts:			
1-299	(869-019-00075-5)	30.00	Apr. 1, 1993
300-End	(869-019-00076-3)	22.00	Apr. 1, 1993
23	(869-019-00077-1)	21.00	Apr. 1, 1993
24 Parts:			
0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-019-00080-1)	17.00	Apr. 1, 1993
*700-1699	(869-019-00081-0)	39.00	Apr. 1, 1993
1700-End	(869-019-00082-8)	15.00	Apr. 1, 1993
25	(869-019-00083-6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0-1-1.60	(869-019-00084-4)	21.00	Apr. 1, 1993
§§ 1.61-1.169	(869-019-00085-2)	37.00	Apr. 1, 1993
§§ 1.170-1.300	(869-019-00086-1)	23.00	Apr. 1, 1993
*§§ 1.301-1.400	(869-019-00087-9)	21.00	Apr. 1, 1993
§§ 1.401-1.440	(869-019-00088-7)	31.00	Apr. 1, 1993
§§ 1.441-1.500	(869-019-00089-5)	23.00	Apr. 1, 1993
§§ 1.501-1.640	(869-019-00090-9)	20.00	Apr. 1, 1993
§§ 1.641-1.850	(869-019-00091-7)	24.00	Apr. 1, 1993
§§ 1.851-1.907	(869-019-00092-5)	27.00	Apr. 1, 1993
§§ 1.908-1.1000	(869-019-00093-3)	26.00	Apr. 1, 1993
§§ 1.1001-1.1400	(869-019-00094-1)	22.00	Apr. 1, 1993
§§ 1.1401-End	(869-019-00095-0)	31.00	Apr. 1, 1993
2-29	(869-019-00096-8)	23.00	Apr. 1, 1993
30-39	(869-019-00097-6)	18.00	Apr. 1, 1993
40-49	(869-019-00098-4)	13.00	Apr. 1, 1993
50-299	(869-019-00099-2)	13.00	Apr. 1, 1993
300-499	(869-017-00100-0)	23.00	Apr. 1, 1993
500-599	(869-019-00101-8)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–019–00102–6)	8.00	Apr. 1, 1993
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–019–00104–2)	11.00	[5] Apr. 1, 1991
28	(869–017–00104–0)	37.00	July 1, 1992
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–017–00107–4)	32.00	July 1, 1992
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–017–00109–1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869–017–00110–4)	16.00	July 1, 1992
1911–1925	(869–017–00111–2)	9.00	[6] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–017–00113–9)	30.00	July 1, 1992
30 Parts:			
1–199	(869–017–00114–7)	25.00	July 1, 1992
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–017–00117–1)	17.00	July 1, 1992
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–017–00119–8)	30.00	July 1, 1992
190–399	(869–017–00120–1)	33.00	July 1, 1992
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[7] July 1, 1991
700–799	(869–017–00123–6)	20.00	July 1, 1992
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–017–00125–2)	18.00	July 1, 1992
125–199	(869–017–00126–1)	21.00	July 1, 1992
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–017–00128–7)	27.00	July 1, 1992
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–017–00130–9)	32.00	July 1, 1992
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–017–00134–1)	17.00	July 1, 1992
38 Parts:			
0–17	(869–017–00135–0)	28.00	Sept 1, 1992
18–End	(869–017–00136–8)	28.00	Sept. 1, 1992
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–017–00138–4)	31.00	July 1, 1992
52	(869–017–00139–2)	33.00	July 1, 1992
53–60	(869–017–00140–6)	36.00	July 1, 1992
61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–017–00142–2)	17.00	July 1, 1992
86–99	(869–017–00143–1)	33.00	July 1, 1992
100–149	(869–017–00144–9)	34.00	July 1, 1992
150–189	(869–017–00145–7)	21.00	July 1, 1992
190–259	(869–017–00146–5)	16.00	July 1, 1992
260–299	(869–017–00147–3)	36.00	July 1, 1992
300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–017–00150–3)	26.00	July 1, 1992
700–789	(869–017–00151–1)	23.00	July 1, 1992
790–End	(869–017–00152–0)	25.00	July 1, 1992
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–017–00153–8)	9.50	July 1, 1992
101	(869–017–00154–6)	28.00	July 1, 1992
102–200	(869–017–00155–4)	11.00	[7] July 1, 1991
201–End	(869–017–00156–2)	11.00	July 1, 1992
42 Parts:			
1–399	(869–017–00157–1)	23.00	Oct. 1, 1992
400–429	(869–017–00158–9)	23.00	Oct. 1, 1992
430–End	(869–017–00159–7)	31.00	Oct. 1, 1992
43 Parts:			
1–999	(869–017–00160–1)	22.00	Oct. 1, 1992
1000–3999	(869–017–00161–9)	30.00	Oct. 1, 1992
4000–End	(869–017–00162–7)	13.00	Oct. 1, 1992
44	(869–017–00163–5)	26.00	Oct. 1, 1992
45 Parts:			
1–199	(869–017–00164–3)	20.00	Oct. 1, 1992
200–499	(869–017–00165–1)	14.00	Oct. 1, 1992
500–1199	(869–017–00166–0)	30.00	Oct. 1, 1992
1200–End	(869–017–00167–8)	20.00	Oct. 1, 1992
46 Parts:			
1–40	(869–017–00168–6)	17.00	Oct. 1, 1992
41–69	(869–017–00169–4)	16.00	Oct. 1, 1992
70–89	(869–017–00170–8)	8.00	Oct. 1, 1992
90–139	(869–017–00171–6)	14.00	Oct. 1, 1992
140–155	(869–017–00172–4)	12.00	Oct. 1, 1992
156–165	(869–017–00173–2)	14.00	[8] Oct. 1, 1991
166–199	(869–017–00174–1)	17.00	Oct. 1, 1992
200–499	(869–017–00175–9)	22.00	Oct. 1, 1992
500–End	(869–017–00176–7)	14.00	Oct. 1, 1992
47 Parts:			
0–19	(869–017–00177–5)	22.00	Oct. 1, 1992
20–39	(869–017–00178–3)	22.00	Oct. 1, 1992
40–69	(869–017–00179–1)	12.00	Oct. 1, 1992
70–79	(869–017–00180–5)	21.00	Oct. 1, 1992
80–End	(869–017–00181–3)	24.00	Oct. 1, 1992
48 Chapters:			
1 (Parts 1–51)	(869–017–00182–1)	34.00	Oct. 1, 1992
1 (Parts 52–99)	(869–017–00183–0)	22.00	Oct. 1, 1992
2 (Parts 201–251)	(869–017–00184–8)	15.00	Oct. 1, 1992
2 (Parts 252–299)	(869–017–00185–6)	12.00	Oct. 1, 1992
3–6	(869–017–00186–4)	22.00	Oct. 1, 1992
7–14	(869–017–00187–2)	30.00	Oct. 1, 1992
15–28	(869–017–00188–1)	26.00	Oct. 1, 1992
29–End	(869–017–00189–9)	16.00	Oct. 1, 1992
49 Parts:			
1–99	(869–017–00190–2)	22.00	Oct. 1, 1992
100–177	(869–017–00191–1)	27.00	Oct. 1, 1992
178–199	(869–017–00192–9)	19.00	Oct. 1, 1992
200–399	(869–017–00193–7)	27.00	Oct. 1, 1992
400–999	(869–017–00194–5)	31.00	Oct. 1, 1992
1000–1199	(869–017–00195–3)	19.00	Oct. 1, 1992
1200–End	(869–017–00196–1)	21.00	Oct. 1, 1992
50 Parts:			
1–199	(869–017–00197–0)	23.00	Oct. 1, 1992
200–599	(869–017–00198–8)	20.00	Oct. 1, 1992
600–End	(869–017–00199–6)	20.00	Oct. 1, 1992
CFR Index and Findings Aids	(869–019–00053–4)	36.00	Jan. 1, 1993
Complete 1993 CFR set		775.00	1993
Microfiche CFR Edition: Complete set (one-time mailing)		188.00	1990

Title	Stock Number	Price	Revision Date
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Subscription (mailed as issued)		223.00	1993
Individual copies		2.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.

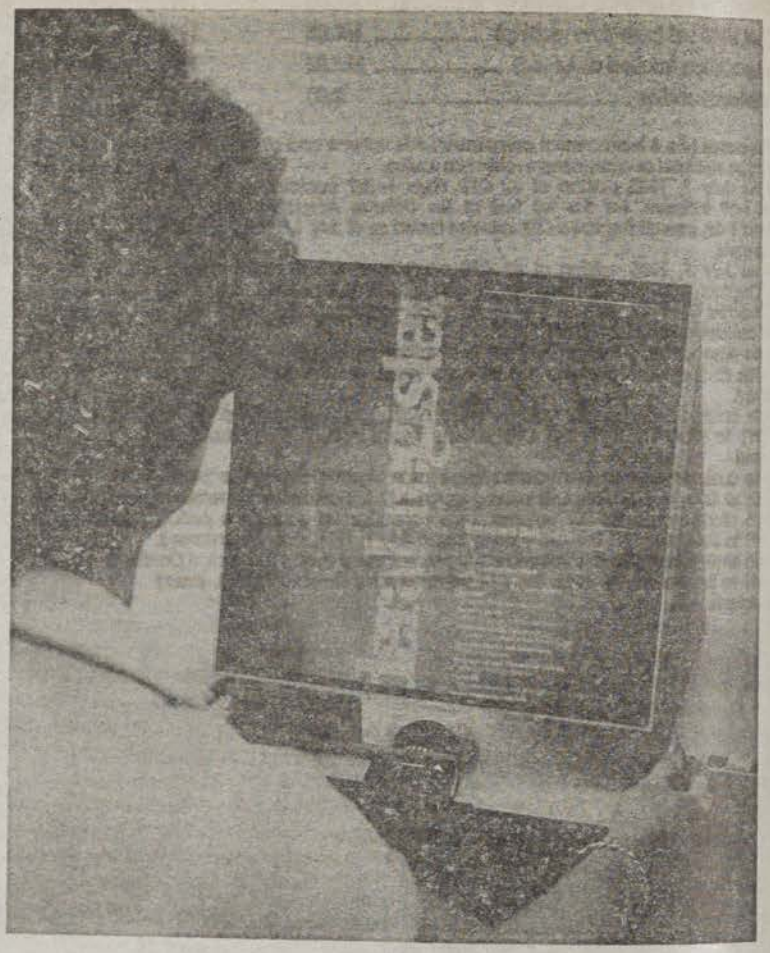
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $353.00
Six months: $176.50

Code of Federal Regulations:

Current year (as issued): $223.00

Superintendent of Documents Subscriptions Order Form

Order Processing Code:

*** 5348**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

_____ Federal Register: _____ One year: $353.00 _____ Six months: $176.50

_____ Code of Federal Regulations: _____ One year: $223.00

1. The total cost of my order is $_____ All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

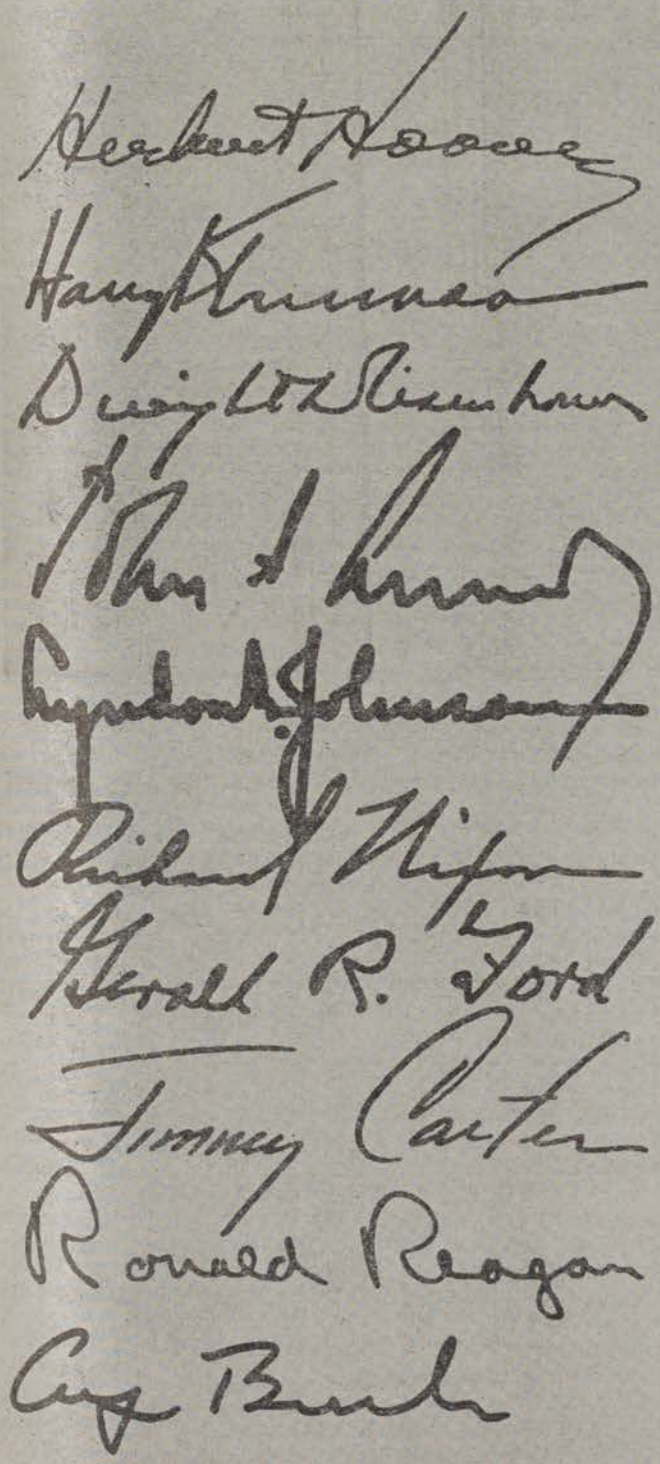
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 **(Rev. 10/92)**



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

Ronald Reagan

1983 (Book I) $31.00

1983 (Book II) $32.00

1984 (Book I) $36.00

1984 (Book II) $36.00

1985 (Book I) $34.00

1985 (Book II) $30.00

1986 (Book I) $37.00

1986 (Book II) $35.00

1987 (Book I) $33.00

1987 (Book II) $35.00

1988 (Book I) $39.00

1988–89 (Book II) $38.00

George Bush

1989 (Book I) $38.00

1989 (Book II) $40.00

1990 (Book I) $41.00

1990 (Book II) $41.00

1991 (Book I) $41.00

1991 (Book II) $44.00

1992 (Book I) $47.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

New Publication

List of CFR Sections Affected

1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16) $27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27) $25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41) $28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50) $25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code:
***6962**

Charge your order. It's easy!

To fax your orders and inquiries—(202) 512-2

Please Type or Print (Form is aligned for typewriter use.)

Prices include regular domestic postage and handling and are good through 12/92. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog—Bestselling Government Books	FREE	FREE
			Total for Publications	

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

(Credit card expiration date)

Thank you for your order!

(Signature)

Printed on recycled paper