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

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(two briefings)

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Presidential Documents

Title 3—

The President

Proclamation 6585 of August 11, 1993

To Designate Peru as a Beneficiary Country for Purposes of the Andean Trade Preference Act

By the President of the United States of America

A Proclamation

1. Sections 202 and 204 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201 and 3203) confer authority upon the President to proclaim duty-free treatment for all eligible articles, and duty reductions for certain other articles, that are the product of any country designated as a "beneficiary country" in accordance with the provisions of section 203 of the ATPA (19 U.S.C. 3202). Pursuant to section 203(b)(2) of the ATPA (19 U.S.C. 3202(b)(2)), I have notified the House of Representatives and the Senate of my intention to designate Peru as a beneficiary country for purposes of the ATPA, together with the considerations entering into such decision. I hereby designate Peru as a beneficiary country under the ATPA, and in order to reflect this designation in the Harmonized Tariff Schedule of the United States (HTS), I have decided that it is necessary to modify general note 3(c)(ix) to the HTS.

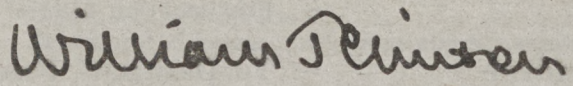
2. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 203 of the ATPA and section 604 of the Trade Act of 1974, do proclaim that:

(1) General note 3(c)(ix)(A) to the HTS is modified by inserting in alphabetical sequence "Peru", which is hereby designated as a beneficiary country under the ATPA.

(2) The modifications made by paragraph (1) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of publication of this proclamation in the Federal Register.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of August, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.



[FR Doc. 93–19868
Filed 8–12–93; 3:35 pm]
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Editorial note: For the President's letter to Congressional leaders on trade with Peru, see issue 32 of the *Weekly Compilation of Presidential Documents*.

Rules and Regulations

Federal Register
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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 905, 926, and 985

[Docket Nos. FV93-905-2, FV93-926-1, and FV93-985-1 FIR]

Finalization of Interim Final Rules for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Agriculture) is adopting as a final rule, without change, the provisions of the interim final rules that authorized expenses and established assessment rates for the Citrus Administrative Committee, Tokay Grape Industry Committee, and Spearmint Oil Administrative Committee (Committees) under M.O. Nos. 905, 926, and 985, respectively. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1993, through July 31, 1994 (§ 905.232), April 1, 1993, through March 31, 1994 (§ 926.232), and June 1, 1993, through May 31, 1994 (§ 985.212).

FOR FURTHER INFORMATION: John R. Toth (M.O. 905), Southeast Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone (813) 299-4770; Peter Parks (M.O. 926), California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102 B, Fresno, California 93721, telephone: (209) 487-5901; Robert J. Curry (M.O. 985), Northwest Marketing Field Office, 1220 SW Third Avenue, room 369, Portland, Oregon 97204, telephone: (503) 326-2724; or Britthany E. Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524-S, Washington, DC 20090-6456; telephone: (202) 690-0992.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Orders No. 905 [7 CFR part 905] regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; Marketing Agreement and Marketing Order No. 926 [7 CFR part 926] regulating the handling of Tokay grapes grown in San Joaquin County, California; and Marketing Agreement and Marketing Order No. 985 [7 CFR part 985], regulating the handling of spearmint oil produced in the Far West. The marketing 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 in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, citrus fruit grown in the lower Rio Grande Valley of Texas, Tokay grapes grown in San Joaquin County, California, and spearmint oil produced in the Far West are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable citrus fruit, grapes, and spearmint oil handled during the 1993-94 marketing year, beginning August 1, 1993, through July 31, 1994 (M.O. 905), April 1, 1993, through March 31, 1994 (M.O. 926); and June 1, 1993, through May 31, 1994 (M.O. 985). This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his 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 requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of oranges, grapefruit, tangerines, and tangelos grown in Florida, 3 handlers of Tokay grapes grown in San Joaquin County, California, and 9 handlers of spearmint oil produced in the Far West who are subject to regulation under the respective marketing orders. There are approximately 10,200 producers of citrus fruit, 15 producers of Tokay grapes, and 253 producers of spearmint oil in the regulated areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the citrus fruit, Tokay grape, and spearmint oil producers and handlers may be classified as small entities.

The respective marketing orders require that the assessment rates for a particular marketing year shall apply to all assessable citrus fruit, Tokay grapes, and spearmint oil handled from the beginning of such year. An annual budget of expenses is prepared by each Committee and submitted to the Department for approval. The members of the Committee are producers of the regulated citrus fruit, Tokay grapes, and

spearmint oil. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing anticipated expenses by expected shipments of citrus fruit, Tokay grapes, and spearmint oil. Because these rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the Committees' expected expenses. The recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committees will have funds to pay their expenses.

The Citrus Administrative Committee (CAC) met April 27, 1993, and unanimously recommended a budget with expenses of $200,000 for the 1993–94 fiscal year, which is the same expense amount approved for 1992–93 fiscal year. The expense items in the 1993–94 budget are for the administration of the marketing order, and include such major expense items as employee salaries, telephone and facsimile use, and office operations expenses.

The CAC also recommended a 1993–94 assessment rate of $0.00285 per 4/5 bushel carton of fresh fruit shipped, compared with $0.0003 established for 1992–93. Assessment income for 1993–94 is expected to total $182,400, based on estimated shipments of 64,000,000 cartons of assessable fruit. The 1992–93 comparable assessment income total was $187,500, based upon shipments of 60,500,000 cartons of assessable fruit. Interest income for 1993–94 is estimated at $2,500, compared with $4,000 estimated for the 1992–93 fiscal year. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $15,000, will be within the maximum permitted by the order of one fiscal year's expenses.

The Tokay Grape Administrative Committee (TGAC) met on April 2, 1993, and unanimously recommended total expenses for the 1993–94 fiscal year of $5,150 with an assessment rate of $0.07 per carton. In comparison, this is a $125 decrease in expenditures from the 1992–93 fiscal year with the assessment rate remaining unchanged. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $4,500, will be within the maximum permitted by the order of one fiscal year's expenses.

The Spearmint Oil Administrative Committee (SOAC) met on February 25, 1993, and unanimously recommended 1993–94 marketing order expenses of $198,000 and an assessment rate of $0.08 per pound of spearmint oil. In comparison, the 1992–93 marketing year budgeted expenditures were $183,972 and the assessment rate was $0.08 per pound of spearmint oil.

Major expenditure categories in the 1993–94 budget are $81,500 for program administration, $93,500 for salaries, and $23,000 for SOAC travel and compensation. Comparable budgeted expenditures for the 1992–93 marketing year were $72,000, $89,972, and $22,000, respectively.

Assessment income for the 1993–94 marketing year is estimated at $132,000 based on shipments of 1,650,000 pounds of spearmint oil. Additionally, interest and incidental income for the 1993–94 marketing year is estimated at $8,000. The SOAC operational reserve, which is expected to amount to $202,559 on May 31, 1993, will be available to meet the planned $58,000 budget deficit for 1993–94. The projected reserves at the end of the 1993–94 marketing year will not exceed the amount permitted under the marketing order of one marketing year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. 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.

Interim final rules were published in the **Federal Register** [58 FR 33756, June 21, 1993], for 7 CFR part 905, [58 FR 33012, June 15, 1993], for 7 CFR part 926, and [58 FR 32596, June 11,1993], for 7 CFR part 985. Each interim final rule provided a 30-day comment period for interested persons. No comments were received.

It is found that the specified expenses for the marketing orders covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993–94 fiscal years for the programs begin on August 1, 1993, for Florida citrus, and began on April 1, 1993, for Tokay grapes, and June 1, 1993, for spearmint oil. The marketing orders require that the rates of assessment for the fiscal years apply to all assessable citrus fruit, grapes, and spearmint oil handled during the fiscal years. In addition, handlers are aware of these actions which were recommended by the Committees at public meetings and published in the **Federal Register** as interim final rules. No comments were received concerning the three interim final rules that are adopted in this action as a final rule without change.

List of Subjects

7 CFR Part 905

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

7 CFR Part 926

Marketing agreements, Tokay Grapes, Reporting and recordkeeping requirements.

7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR parts 905, 926, and 985 are amended to read as follows:

1. The authority citation for 7 CFR parts 905, 926, and 985 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the Annual Code of Federal Regulations.

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

2. For the reasons set forth in the preamble, the interim final rule adding § 905.232 which was published at 58 FR 33756, is adopted as a final rule without change.

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

3. For the reasons set forth in the preamble, the interim final rule adding § 926.232 which was published at 58 FR 33012, is adopted as a final rule without change.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

4. For the reasons set forth in the preamble, the interim final rule adding §985.313 which was published at 58 FR 32596, is adopted as a final rule without change.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19664 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 920

[Docket No. FV93–920–1FR]

Kiwifruit Grown in California; Revision of Pack and Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises pack and container requirements for California kiwifruit. The first change adds a new size category to the allowable sizes for packs of kiwifruit. The second change standardizes packaging for certain volume-fill containers packed by weight at 23 pounds. The third change requires all containers of kiwifruit to be marked with the identity of the product; the name, address, and zip code of the shipper; and the quantity of the product within the container. These changes were unanimously recommended by the Kiwifruit Administrative Committee (committee) at its annual meeting.

EFFECTIVE DATE: This final rule becomes effective August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mark A. Hessel, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 720–5127; or Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721; telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 920 (7 CFR Part 920), both as amended, regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 65 handlers of California kiwifruit subject to regulation under the marketing order and approximately 600 kiwifruit producers in the production area. The Small Business Administration (13 CFR 121.601) has defined small agricultural producers as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The proposed rule concerning this action was published in the June 30, 1993, **Federal Register** (58 FR 34940), with a 15-day comment period ending July 15, 1993. No comments were received.

Under the terms of the marketing order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack, and container requirements. Current requirements include specifications that such shipments be at least Size 49, grade at least KAC No. 1 quality, and contain a minimum of 6.5 percent soluble solids.

The production of California kiwifruit for the 1992 season was approximately 12.7 million tray equivalents, compared to the 1991 season production of 7.2 million tray equivalents. This represents a 76 percent increase in California kiwifruit production from 1991 to 1992.

The committee, the agency responsible for local administration of the marketing order, met on February 4, 1993, and unanimously recommended changes to the regulations. These recommended changes and the resulting amendments are as follows:

Additional Size Designation

Section 920.302(a)(4)(ii) of the rules and regulations includes a table that specifies numerical size designations to be used in packing certain containers of kiwifruit. These size designations are defined by numerical counts, which establish the maximum number of fruit per 8-pound sample for each of the established sizes. The size designation table only applies to kiwifruit packed in bags, volume-fill, or bulk containers, and does not apply to kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays. The size designation table defines nine different sizes, beginning with Size 25 (the largest size) and ending with Size 49 (the smallest size). For example, Size 25 means that a maximum number of 27 pieces of kiwifruit may be contained in an 8-pound sample when packed in bags, volume-fill, or bulk containers. The committee recommended adding a Size 21 category which authorizes a maximum number of 22 pieces of fruit in an 8-pound sample.

Size 21 will be the largest size designation for kiwifruit packed in bags, volume-fill, or bulk containers. As a result of improved cultural practices, kiwifruit larger than Size 25 have become more prevalent. During the 1990–91 shipping season, 301 tray equivalents of California kiwifruit

shipments were classified in sizes larger than a Size 25 equivalent, but during the 1992–93 shipping season, 6,022 tray equivalents of California kiwifruit shipments were classified as larger than a Size 25 equivalent. This trend is expected to continue.

Currently, for bags, volume-fill, and bulk containers containing kiwifruit the equivalent of Size 21 or larger, the size is marked as "Size 25." This puts handlers shipping kiwifruit larger than Size 25 at a disadvantage, because handlers may receive higher prices for larger sizes of kiwifruit and could benefit by classifying it as a larger size. A handler does have the option of using containers with molded trays and marking them "21 count," but this container is more expensive than using either bags, volume-fill, or bulk containers. For this reason, more kiwifruit is being shipped in bags, volume-fill, and bulk containers. In 1992, 41.8 percent of California kiwifruit was shipped in either bags, volume-fill, or bulk containers as compared to 18 percent in 1987. There is a need for a Size 21 designation so that kiwifruit marked "Size 21" may be shipped in bags, volume-fill, or bulk containers.

In addition, not having a Size 21 designation makes it difficult for handlers to stay within the size tolerances for the Size 25 designation. Current pack requirements specify that kiwifruit designated as Size 25 must be packed within a ½-inch size tolerance. Since there is no Size 21 designation, kiwifruit of Size 21 or larger is often "blended" into the Size 25 designation. Blending occurs because the four largest size designations have the same size tolerance specified under the order (½-inch) and kiwifruit within that tolerance may be packed in any of those sizes. Blending requires handlers to take special care to stay within the size tolerance and reduces the uniformity of the pack size. Establishing a Size 21 designation could reduce the cost of packing larger-sized fruit by making it easier for handlers to stay within the established size tolerances.

For the above reasons, this change has a positive impact throughout the industry by allowing Size 21 fruit to be uniformly packed in bags, volume-fill, or bulk containers. This change encourages a more uniform pack of larger-sized fruit by decreasing the amount of blending and increasing grower returns since larger fruit often sells at a higher price.

Standardized Packaging

The committee also recommended standardizing the weight of certain volume-fill containers marked by weight at 23 pounds. Paragraph (a)(3) of § 920.52 specifies that the Secretary may fix the weight of containers used in the handling of kiwifruit.

Handlers may ship volume-fill containers of kiwifruit marked by count or by weight depending upon the preference of the receiver. Volume-fill containers marked by count is not affected by this particular change. Also, containers of less than 10 pounds or more than 35 pounds is not affected by this weight standard. Thus, the industry continues to have the flexibility to utilize containers of different weights for a variety of consumer needs.

Currently, there is no standard weight established for volume-fill containers marked by weight. Handlers are shipping volume-fill containers marked by weight primarily of either 21 or 23 pounds. Both containers are sold at essentially the same price. Retailers often expect to receive 23-pound containers and actually receive 21-pound containers. The inconsistency of container sizes has caused confusion and complaints in the marketplace. Standardizing the weight of volume-fill containers marked by weight standardizes marketing practices for the kiwifruit industry.

The committee considered setting the minimum weight for volume-fill containers at 21 pounds rather than at 23 pounds. Those in favor of a 21-pound container believed that such a container packed better. However, some committee members commented that setting a 21-pound standard may result in some loosely packed containers. This in turn could present quality problems caused by a greater amount of jostling during packing and transportation. Proponents of setting a 23-pound standard also pointed out that nearly 90 percent of the volume-fill containers of kiwifruit shipped by the California kiwifruit industry in 1992 were 23-pound containers.

Currently, the committee is aware of three handlers who pack 21-pound volume-fill containers. Most containers used to pack 21 pounds are large enough to contain 23 pounds of kiwifruit. Also, such containers could be used for volume-fill containers marked by count or as 3-layer cartons. This change imposes some minimal costs on some handlers who will have to convert 21-pound volume-fill containers into other types of containers. However, the overall benefits to the California kiwifruit industry by standardizing volume-fill containers at 23 pounds more than offsets the costs imposed on handlers.

An additional packing requirement is added for containers in which quantity is specified by count. The count is required to be equal to three times the size designation. This is already an existing container marking practice of the kiwifruit industry. For example, if the kiwifruit is Size 42, then, on average a total of 126 pieces of fruit would be in the container. The carton would be labeled "Size 42, 126 count." Standardizing the container marking requirements of volume-fill containers marked by count clarifies marketing practices for the kiwifruit industry. Also, the United States Standards for Grades of Kiwifruit in § 51.2338(c)(2) specifies that the actual count shall not vary more than two from the marked count.

Container Marking Requirements

The committee also recommended additional container marking requirements. Section 920.52(a)(3) specifies that the Secretary may set container marking requirements on shipments of kiwifruit. In past years, some container marking requirements on shipments of California kiwifruit were required under the California Agricultural Code. These requirements specified that all containers of kiwifruit be marked with the identity of the product, the name and address of the shipper, and a description of the quantity of kiwifruit contained inside. These three requirements are referred to as identity, responsibility, and quantity (IRQ). The California Department of Food and Agriculture was responsible for the enforcement of these IRQ requirements. Last year, in response to severe budget restraints, the State put this program on a user fee basis. The California kiwifruit industry decided to drop out of the State program, and establish needed container marking requirements under the Federal marketing order.

Specifically, this action establishes under the Federal marketing order's rules and regulations, with minor modifications, the container marking requirements that were formerly required under the California Agricultural Code. The order now requires under § 920.302 that closed containers with cell compartments, cardboard fillers, or molded trays be marked with the count, and that bags, volume-fill, and bulk containers be marked with the size designation, as specified by the size designation table. Also, all containers, except those containers supervised by the Federal or Federal-State Inspection Service being loaded directly for export, need to be marked with a lot stamp number.

This action establishes standard container marking requirements similar to IRQ requirements. First, all kiwifruit containers must be labeled with the term "kiwifruit" and the varietal name, if the varietal name is other than Hayward. The container must be labeled as "unknown variety," if the variety of kiwifruit is unknown.

Second, containers also need to be marked with the name and the address of the handler. The address needs to include the city, state, and zip code.

Third, information regarding the quantity of kiwifruit is required to be marked on each of the following types of containers. (1) The count needs to be marked on all molded trays and 3-layer cartons. (2) The net weight and size designation needs to be marked on volume-fill containers packed by weight. Also, the count and size designation needs to be marked on volume-fill containers packed by count. (3) The net weight and size designation or the net weight, count, and size designation needs to be marked on bulk bins. (4) Master containers, which hold more than one individual package, need to be marked to properly express the quantity of the contents. Also, the size designation needs to be marked. For example, a master container packed with 20 packages each containing 1 pound of Size 49 kiwifruit needs to be labeled "20–1 lb. packages, Size 49." (5) The net weight or count needs to be marked on all individual consumer packages. If the count is used, then it needs to be accompanied by the size designation.

When the quantity is expressed in terms of weight, size designation, or count, the marking needs to be accompanied by the words "net weight," "size," or "count" as applicable. For example, a size designation could be marked on a container as "Size 49" or as "49 size," but not as "49."

The lot stamp number could be plainly marked anywhere on the outside of the container. Lot stamp numbers are not required for consumer packages or those containers supervised by the Federal or Federal-State Inspection Service being loaded directly for export. All other container marking information needs to be plainly and conspicuously marked on at least one outside principal display panel. The term "principal display panel" means that part of the package or container most likely to be displayed, presented, shown, or examined under normal or customary conditions of display and purchase.

These requirements are necessary because a number of major export markets, including Canada, require these markings. The California kiwifruit industry may have containers of kiwifruit rejected at points of destination unless such containers are properly marked. Currently, containers may pass inspection at the shipping point yet be detained at the point of destination because of improper markings. The mandatory marking of all containers with information regarding the identity, responsibility, and quantity helps prevent problems for shippers and receivers of kiwifruit.

The committee considered not recommending any new container markings, but concluded that invariably some shippers would not follow customary container marking practices. This could damage the reputation of the California kiwifruit industry if improperly marked kiwifruit containers were rejected at the receiving point. Also, mandatory container marking requirements standardizes labeling for California kiwifruit containers. Inconsistent container marking practices could result in confusion in the marketplace and ultimately lower sales and grower revenue.

In addition, the committee considered remaining under the State program and paying an additional assessment of $.001 per container. Not only is this alternative more expensive than adding the IRQ regulations to the Federal order, but it imposes an additional burden by requiring Shipping Point Inspection (SPI) personnel to contact State Standardization personnel each time a mislabeled container was detected. Under this rule, the SPI inspects and certifies compliance with IRQ requirements, in addition to current grade, size, maturity, pack, and container marking requirements under the order.

For purposes of clarification, portions of paragraph (a)(4) and paragraph (a)(5) of § 920.302 regarding container marking requirements are incorporated, in modified form, into a new § 920.303 which deals specifically with container marking requirements. It is the intent of this action to add new container marking requirements to the rules and regulations and not to replace existing container marking requirements.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be implemented prior to the beginning of the shipping season in mid-September. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a proposed rule provided a 15-day comment period and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 920.302, paragraph (a)(5) is removed, and paragraph (a)(4) is revised to read as follows:

Note: The following section will appear in the Code of Federal Regulations.

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(4) *Pack Requirements.* (i) Kiwifruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers or molds in which they are packed. Such fruit shall be fairly uniform in size. Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet the requirements of this paragraph. The fruit packed in such containers shall meet the following minimum weight requirements at the time of initial inspection:

Count designation of fruit	Minimum net weight of fruit (lbs)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.5

The average weight of all sample units in a lot must meet the specified minimum net weight, but no sample unit may be more than 4 ounces less than such weight.

(ii) Kiwifruit packed in bags, volume fill or bulk containers may not vary more than ½-inch (12.7 mm) in

diameter if Size 30 or larger; not more than ⅜-inch (9.5 mm) in diameter if Size 33, 36, 39, or 42; and not more than ¼-inch in diameter (6.4 mm) if Size 45/46 or smaller. Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet the requirements of this paragraph. The following table specifies the numerical size designation to be used in packing such containers as shown in Column 1, and the maximum number of fruit per 8-pound sample as shown in Column 2.

Column 1, numerical count size designation	Column 2, maximum number of fruit per 8-pound sample
21	22
25	27
27/28	30
30	32
33	35
36	40
39	45
42	50
45/46	57
49	60

The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(iii) For shipments in volume-fill containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in the U.S. Standards for Grades of Kiwifruit (7 CFR 51.2328(c)(2)).

(iv) All volume-fill containers of kiwifruit designated by weight shall hold 23 pounds net weight of kiwifruit unless such containers hold less than 10 pounds or more than 35 pounds net weight of kiwifruit.

* * * * *

3. A new § 920.303 is added to read as follows:

Note: The following section will appear in the Code of Federal Regulations.

§ 920.303 Container marking regulations.

No handler shall ship any kiwifruit except in accordance with the following terms and conditions:

(a) Each package or container of kiwifruit shall bear on at least one outside principal display panel in plain sight and in plain letters, the word "kiwifruit," the name of the variety (if other than the Hayward variety), if known or, when the variety is not known, the words "unknown variety."

(b) Each package or container of kiwifruit shall bear on one outside principal display panel in plain sight and in plain letters the name and address (including the city, state, and zip code) of the shipper.

(c) Each package or container of kiwifruit shall bear on one outside principal display panel in plain sight and in plain letters the following information regarding the quantity of kiwifruit packed within the container:

(1) The quantity shall be indicated in terms of count for kiwifruit packed in cell compartments, cardboard fillers, or molded trays, and the contents shall conform to the count.

(2) The quantity shall be indicated in terms of the size designation and either the net weight for volume-fill containers packed by weight or the count for volume-fill containers packed by count.

(3) For bulk bins, the quantity shall be indicated in terms of the size designation and net weight; or in terms of the size designation, net weight, and count.

(4) Master containers, which hold more than one individual package, must be properly marked with the quantity of the contents. The size designation must also be indicated.

(5) The quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. If count is used, it must be accompanied by the size designation.

(6) Designations of size, count, and net weight on each container shall be accompanied by the words "size," "count," or "net weight" as applicable.

(d) Containers of kiwifruit shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector; except for individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

(e) As used in this section, the term "principal display panel" means that part of the package or container most likely to be displayed, presented, shown or examined under normal or customary conditions of display and purchase.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19668 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 923

[Docket No. FV93–923–1FR]

Sweet Cherries Grown in Designated Counties in Washington; Finalize Revised Size and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule without change an interim final rule which increased the minimum size requirement for Washington sweet cherries that can be shipped to fresh market outlets from 52/64 to 54/64 inch in diameter, and revised the pack requirements for such cherries. Such action was designed to provide fresh markets and consumers with slightly larger fruit, and improve the quality of cherries offered to consumers. This is intended to enhance the image of Washington sweet cherries in the fresh market, and improve returns to producers. This action was recommended by the Washington Cherry Marketing Committee (committee), which works with the Department in administering the marketing order.

EFFECTIVE DATE: This final rule becomes effective September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mark J. Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 923 (7 CFR part 923), as amended, regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not

intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary will 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 the date of the entry of the ruling.

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

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

There are approximately 50 handlers of Washington sweet cherries that are subject to regulation under the marketing order. In addition, there are approximately 1,100 producers in the regulated area. The majority of handlers and producers of Washington sweet cherries may be classified as small entities as defined by the Small Business Administration (SBA) (13 CFR 121.601). Small agricultural producers have been defined by the SBA 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 interim final rule was issued on May 21, 1993, and published in the Federal Register (58 FR 30698, May 27, 1993) with an effective date of May 27, 1993. That rule revised the size and pack requirements for Washington cherries by amending § 923.322. That rule also provided a 30-day comment period which ended June 28, 1993. No comments were received.

The committee met on November 18, 1992, and recommended that the minimum size requirement established for fresh market shipments be increased from 52/64 to 54/64 inch in diameter, an increase of 2/64 inch in diameter. This eliminates the 52/64 inch or "13 row size" pack and makes the 54/64 inch or "12 row size" pack the minimum allowable size.

The minimum size increase was designed to improve the image of Washington sweet cherries in the marketplace and provide buyers with slightly larger sized fruit, thus improving the quality level and flavor. That action should encourage repeat purchases and increase cherry sales, shipments, and grower returns.

Approximately 90 million pounds of sweet cherries were shipped during the 1992 season. Shipments of fruit less than 54/64 inch in diameter accounted for less than one percent of total industry shipments. Approximately 1/10th of one percent of 1992 shipments consisted of fruit designated as 13 row size. A 2/64 of an inch increase in the size requirement for sweet cherries grown in designated counties in Washington will have a negligible impact on industry supplies. In addition, the size increase was designed to improve the overall fruit size and quality of the pack. Small cherries tend to be less mature, of poorer flavor, and have more defects affecting quality.

Approximately 95 percent of the total shipments of 13 row size fruit during the 1992 season were shipped during the first two weeks of the season, and 100 percent were shipped during the first four weeks of the season. Initial offerings of cherries set the market tone for the remainder of the season. Purchases of larger, higher quality fruit at the beginning of the season are expected to encourage consumers to make subsequent purchases, thus expanding and stabilizing market demand and increasing returns to growers and handlers.

The committee also recommended a conforming change to the handling requirements. Prior to implementation of the interim final rule, at least 90 percent of the cherries in a lot of face packed containers or containers of 20 pounds or more had to measure at least 54/64 inch in diameter, and not more than 5 percent could be less than 52/64 inch in diameter. The intent of that requirement was to restrict the shipment of "13 row size" cherries to containers of 12 pounds or less. Since the increase in the minimum size requirement precluded the shipment of 13 row size cherries, that language is no longer necessary. Therefore, the interim final rule revised paragraph (a)(2) of § 923.322 to reflect the revised minimum size requirement and deleted paragraph (a)(3) of that section relating to face-packed containers and containers of 20 pounds or more.

The interim final rule also made a conforming change to the Washington cherry pack requirements. Paragraphs (c)(2) and (c)(3) of § 923.322, establish pack requirements under the marketing order, which were not in conformity with the Washington State Standards for Grades of Sweet Cherries (Standards) prior to the implementation of the interim final rule. Prior to implementation of that rule, these paragraphs stated that containers marked with a minimum diameter could be shipped if at least 90 percent, by count, of the cherries in any lot met the minimum diameter requirements. The Standards provide that containers marked with a minimum diameter may be shipped only if at least 95 percent, by count, of the cherries in any lot meet the specified minimum diameter. Therefore, the interim final rule revised the current pack requirements under the order concerning minimum diameter markings to conform with the off-size tolerances of the Standards. The interim final rule amended paragraph (c)(2), and eliminated paragraph (c)(3) of § 923.332. That action permitted containers marked with a minimum diameter to be shipped only if at least 95 percent, by count, of the cherries in any lot met the minimum diameter requirements. That action was designed to eliminate possible confusion about labelling requirements, and clarify the requirements, resulting in better service to the industry.

The interim final rule also clarified pack requirements for containers of cherries with row count markings. That action specified that the percentage count for off-size cherries be applied only to individual lots and not to individual containers.

It is the Department's view that this action will benefit producers and handlers. The anticipated increase in demand and grower returns will significantly offset the costs of compliance with the regulations. In addition, the committee believes that the regulatory change will improve returns to producers in the production area while consistently providing fresh markets with slightly larger, good quality, flavorful sweet cherries.

Based on the above information, the Administrator of the AMS has determined that this action will not

have a significant impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of sweet cherries grown in designated counties in Washington State.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule as published in the **Federal Register** [58 FR 30696, May 27, 1993] will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

[**Note:** This section will appear in the annual Code of Federal Regulations.]

2. Accordingly, the interim final rule amending the provisions of § 923.322, which was published in the **Federal Register** [58 FR 30696, May 27, 1993] is adopted as a final rule without change.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19665 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 92–1) consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning OSM Regulatory Reform I and II issues, State initiatives, and stylistic or editorial changes. The proposed changes are intended to revise the Indiana program to be consistent with changes made to the corresponding Federal regulations, and to address industry petitions and State initiatives.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background of the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

Since July 29, 1982 (the date of conditional approval of the Indiana program), a number of changes have been made to the Federal regulations concerning surface coal mining and reclamation operations. Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Indiana on May 22, 1985 (Regulatory Reform I), and August 24, 1988 (Regulatory Reform II), that a number of Indiana regulations are less effective than or inconsistent with the revised Federal requirements.

By letter dated March 26, 1992 (Administrative Record No. IND–1057), the Indiana Department of Natural Resources (IDNR) submitted to OSM a State program amendment package consisting of revisions to 60 sections of the Indiana rules. These revisions address some of the changes to the Indiana program that were identified in the two letters referred to above. Industry and the State have also proposed additional changes which Indiana believes will further improve the approved State program.

OSM announced receipt of the proposed amendment in the May 21, 1992 **Federal Register** (57 FR 21634), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on June 22, 1992. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated June 15, 1992 (Administrative Record Number IND–1098), the IDNR submitted to OSM, proposed changes to program amendments 91–8 and 92–1 at 310 IAC 12–2–2, 310 IAC 12–3–112, and 310 IAC 12–3–13. These same changes are also proposed in the 92–1 amendment package. OSM announced receipt of the proposed changes in the August 19, 1992, **Federal Register** (57 FR 37498), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended on September 3, 1992. The proposed changes to 310 IAC 12–2–2, 310 IAC 12–3–13, and 310 IAC 12–3–112 were subsequently approved by OSM on December 30, 1992 (57 FR 62207), and will not, therefore, be discussed in this notice.

By letter dated August 19, 1992 (Administrative Record No. IND–1128), OSM responded to Indiana's proposed rules by identifying specific concerns and requesting clarification from Indiana. Indiana responded by letter dated November 5, 1992 (Administrative Record No. IND–1166). Indiana provided additional information by letter dated February 1, 1993 (Administrative Record Number IND–1258). OSM identified additional concerns on March 9, 1993, and March 12, 1993. Indiana responded by letter dated May 17, 1993 (Administrative Record Number IND–1244).

By letter dated December 2, 1992 (Administrative Record Number IND–1175), Indiana submitted program amendment 92–7 concerning subsidence liability. In the 92–7 amendment package, Indiana proposes to add new section 310 IAC 12–5–130.1 to the Indiana program. Some of the new provisions proposed at 310 IAC 12–5–130.1 are closely related to the proposed changes in amendment package 92–1 at 310 IAC 12–5–133. Therefore, the Director transferred the proposed changes at 310 IAC 12–5–133 to Indiana's proposed amendment 92–7.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

A. Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
310 IAC 12–2–6.	Petitions	30 CFR 764.13
310 IAC 12–3–6.	Permit Applications.	30 CFR 777
310 IAC 12–3–94.1.	Experimental Practices.	30 CFR 785.13
310 IAC 12–4–16.	Bond Release; Requirements.	30 CFR 800.40
310 IAC 12–5–30.	Discharge into Underground Mine.	30 CFR 816.41(i)
310 IAC 12–5–32.	Stream Buffer Zone.	30 CFR 816.57
310 IAC 12–5–39 (a), (b), and (d).	Excess Spoil	30 CFR 816.71
310 IAC 12–5–42 (b), and (d) through (h).	Coal Processing Waste Banks; Inspection.	30 CFR 816.83
310 IAC 12–5–43.1.	Refuse Piles; Water Control.	30 CFR 816.83
310 IAC 12–5–51.	Protection of Fish, Wildlife and Environmental Values.	30 CFR 816.97
310 IAC 12–5–55.1.	Backfilling and Grading.	30 CFR 816.102
310 IAC 12–5–57.5.	Backfilling/ Grading Previously Mined Areas.	30 CFR 816.106
310 IAC 12–5–82.	Underground Hydrologic Balance.	30 CFR 817.41
310 IAC 12–5–92.	Underground: Surface and Groundwater Monitoring.	30 CFR 784.14
310 IAC 12–5–95.	Underground: Discharge of Water into Underground Mine.	30 CFR 817.41
310 IAC 12–5–97.	Underground: Stream Buffer Zones.	30 CFR 817.57
310 IAC 12–5–100.	Underground: Preblasting Survey.	30 CFR 817.62
310 IAC 12–5–104 (1) through (9).	Underground: Waste and Excess Spoil.	30 CFR 817.71
310 IAC 12–5–106 (b), (d) through (h).	Underground: Inspection of Waste Banks.	30 CFR 817.83
310 IAC 12–5–107.1.	Refuse Piles; Water Control.	30 CFR 817.83
310 IAC 12–5–115.	Underground: Protection of Fish, Wildlife and Environmental Values.	30 CFR 817.97
310 IAC 12–5–119.1.	Underground: Backfilling and Grading.	30 CFR 817.102

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal regulations.

B. Revisions to Indiana's Rules That Are Not Substantively Identical to the Corresponding Federal Regulations

Revisions which are not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

1. 310 IAC 12–0.5 Definitions

a. *310 IAC 12–0.5–6 Affected area.* This definition is amended by deleting the existing language and adding new language which is intended to reflect the language of the Federal counterpart definition at 30 CFR 701.5. The proposed language differs from the counterpart Federal language in the following ways. The proposed language provides that the affected area includes "each" of seven specified examples of "affected area." In response to an OSM letter (Administrative Record Number IND–1128), Indiana clarified in its letter dated November 5, 1992, that the term "each" will be interpreted to mean that "affected area" means any one or more of the specified examples. In addition, Indiana stated that it will clarify the language through its next available rule submittal. By letter dated July 2, 1993 (Administrative Record Number IND–1272), Indiana submitted proposed amendment 93–5 which contains the language clarifications.

In subsections (4), (5), and (6), Indiana uses the terms "an" or "a" to refer to sites and areas which would be considered "affected areas." In response to the OSM letter mentioned above, Indiana clarified that it interprets "an" and "a" as used at subsections (4), (5), and (6) to mean "any" as used in the counterpart Federal definition. In addition, Indiana will clarify the language through its next available rule submittal.

The Federal definition of "affected area" is suspended insofar as it excludes roads which are included in the definition of "surface coal mining operations" (51 FR 41952; November 20, 1986). The proposed definition does not contain the language which is suspended from the Federal definition of "affected area."

The Director finds, with the clarifications discussed above, that the proposed definition is no less effective than the Federal definition of "affected area" at 30 CFR 701.5. The Director is requiring that Indiana further amend 310 IAC 12–0.5–6 (4), (5), and (6) to clarify that Indiana's use of the terms "an" and "a" to refer to sites and areas which would be considered "affected areas" means "any" as used in the counterpart Federal definition at 30 CFR 701.5

b. *310 IAC 12–0.5–32.5 Cumulative impact area.* This definition is added to provide a counterpart to the Federal definition of "cumulative impact area" at 30 CFR 701.5. The proposed definition is substantively identical to the Federal definition with one exception. The proposed language provides that anticipated mining includes the entire projected lives through final bond release of: (1) The proposed operation; (2) existing operations; (3) any operation for which a permit application has been submitted to the IDNR, and (4) any operation which must meet development requirements for leased Federal coal for which actual mine development information is available. While the counterpart Federal definition contains these same four provisions, the Federal definition makes it clear that the four provisions listed do not comprise an exhaustive list, but are "at a minimum." The proposed language, however, does not make this clear. In the letter dated November 5, 1992, Indiana stated that the only difference between the State and Federal language is in style, and that the meanings are the same. That is, Indiana's interpretation of the proposed language would be consistent with the listed items being considered "at a minimum." The Director finds, therefore, that with the clarification discussed above, the proposed definition is no less effective than the Federal regulations.

c. *310 IAC 12–0.5–90.5 Pipeline.* This definition is added to identify those facilities to which the additional notification requirements and protection provisions contained in 310 IAC 12–3–57, 12–3–106, 12–5–99, 12–5–100, 12–5–131, 12–5–133 will apply. In the proposed definition, "pipeline" means the physical facilities through which petroleum, natural gas, or another hazardous product is transported where: (1) Pipe is used which has a nominal diameter of at least six inches; or (2) operations occur at a pressure of more than 275 pounds per square inch. A pipeline also includes compressor units, metering stations, holders, fabricated assemblies, and the valves and other appurtenances attached to the pipe.

There is no direct Federal counterpart to the language of this definition. The Director finds, however, that the proposed definition is not inconsistent with SMCRA and is no less effective than the Federal regulations.

d. *310 IAC 12–0.5–91.5 Previously mined area.* This definition is added to provide that "previously mined area" means land previously mined on which there have been no surface coal mining operations in existence after August 3, 1977, that were not specifically exempted from 30 U.S.C. 1201, *et seq.*, or IC 13–4.1. On September 25, 1991 (56 FR 48714), the Federal definition of "previously mined area" was proposed for amendment, and on January 8, 1993 (58 FR 3466), a final rule notice announcing approval of the revised Federal definition of "previously mined area" was published in the **Federal Register.** The revised Federal definition of "previously mined area" reads as follows: "Previously mined area means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII." The Federal regulations at 30 CFR 816.106 and 817.106 concerning backfilling and grading of previously mined areas provide an exception to the requirements at 30 CFR 816/817.102 (a)(1) and (a)(2) concerning the elimination of high walls. The revised Federal definition achieves its intended effect in that it: (1) limits the applicability of 30 CFR 816.106 and 817.106 to those areas mined prior to August 3, 1977, that are either unreclaimed or reclaimed to lesser standards than those prescribed by SMCRA; and (2) ensures that areas mined prior to that date that have been fully and satisfactorily reclaimed pursuant to SMCRA's standards will not be redisturbed and then reclaimed under the less stringent requirements of 30 CFR 816.106 and 817.106. For a complete explanation of the revised Federal definition, the reader should refer to the January 8, 1993, **Federal Register.**

The Director finds the proposed Indiana definition of "previously mined area" to be no less effective than the revised Federal definition to the extent that the Indiana definition limits previously mined areas to areas affected by surface coal mining operations prior to August 3, 1977. However, the proposed Indiana definition is less effective than the Federal definition to the extent that the Indiana definition does not also limit previously mined areas to lands affected prior to August 3, 1977, that have not been reclaimed to the standards of 30 CFR chapter VII. Therefore, the Director is requiring that Indiana further amend the definition of "previously mined area" at 310 IAC 12–0.5–91.5 to be no less effective than the revised Federal definition of "previously mined area" at 30 CFR 701.5 published on January 8, 1993 (58 FR 3466).

2. 310 IAC 12–2–7 Initial Processing, Record Keeping, and Notification

In addition to nonsubstantive change to this provision, Indiana proposes to amend subsections (h) and (n), and add a new subsection (j). Subsection (h) is revised to provide that the director of IDNR shall return to the petitioner any petition which is found to be incomplete or frivolous. The new language is substantively identical to the Federal regulations at 30 CFR 764.15(a)(3) except Indiana does not have a counterpart to the Federal language which cites 30 CFR 764.13(a). Under the Federal regulation, a petition may be returned if it does not meet the requirements of 30 CFR 764.13(a).

In its letter dated November 5, 1992, Indiana stated that through the definition at 310 IAC 12–0.5–90 and the requirements of who may file a petition at 310 IAC 12–2–6, the Indiana program adequately satisfies the Federal requirements at 30 CFR 764.13(a). The Director agrees and finds that the provision is no less effective than the Federal regulations at 30 CFR 764.15(a)(3). In addition, Indiana stated that for clarification, a reference to 310 IAC 12–2–6 will be added to 310 IAC 12–2–7.

A new subsection (j) has been added which provides that if the petition covers an area for which designation has previously been considered and rejected, the director of IDNR shall determine if the petition presents significant new allegations of facts with evidence which tends to establish the allegations. The petition shall not be considered if such allegations and evidence are not present and shall be returned with written findings and a reference to the record of the previous proceedings in which the issues raised by the petitioner were considered. The Director finds that this proposed addition is substantively identical to the Federal counterpart language at 30 CFR 764.15(a)(4).

Subsection (n), previously subsection (m), is amended by deleting language which states that inspection of public records shall be available free of charge, and copying at reasonable cost during normal business hours. In its place, Indiana has added "under IC 5–14–3" the provision which concerns access to public records. The Director finds that the deletion of the language noted above does not render the Indiana program less effective than the Federal regulations at 30 CFR 764.15(d), and the addition of the citation concerning access to public records is no less effective than the Federal regulations.

3. 310 IAC 12–3–30.5/68.5 Fish and Wildlife Information

Indiana is adding these new sections to provide rules governing environmental resources information concerning fish and wildlife. The proposed rules and substantively identical to the counterpart Federal regulations at 30 CFR 780.16 and 784.21 with two exceptions. The proposed language at subsections (a) lack counterparts to the Federal requirements at subsections (a)(1) which provide that the scope and detail of the required fish and wildlife information shall be determined by the regulatory authority "in consultation with State and Federal agencies with responsibilities for fish and wildlife." Such information must be sufficient to design the protection and enhancement plan. In addition, the proposed rules have no counterpart to 30 CFR 780.16(a)(2)(iii) and 784.21(a)(2)(iii) which require agency consultation concerning site specific information

Indiana addressed these concerns in its November 5, 1992, letter to OSM. Consultation with State and Federal agencies with responsibilities for fish and wildlife as required by 30 CFR 780.16 (a)(1) and (a)(2)(iii), and 784.21 (a)(1) and (a)(2)(iii) is assured by signed memorandums of understanding (MOU) between the Division of Reclamation of the IDNR, and Division of Fish and Wildlife of the IDNR and the U.S. Fish and Wildlife Service (FWS). Indiana noted that to ensure that every permitting action is reviewed for potential impacts upon fish and wildlife, one full-time staff member,

whose duties are outlined in the MOU between the Division of Reclamation and the Division of Fish and Wildlife, is employed by IDNR's Division of Fish and Wildlife for permit review. In addition, the MOU with the FWS assures the Federal participation. Therefore, Indiana asserts, by both policy and rule, existing State procedures are no less effective than the Federal regulations. The Director agrees, and finds the proposed Indiana rules in concert with the MOU's discussed above are no less effective than the Federal regulations.

4. 310 IAC 12–3–33/12–3–71 Permits; Surface Water Information

Subsections 33/71(a) are amended by deleting the requirement to identify the name of the watershed at subsections 33/71(a)(1). The counterpart Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2) do not require the name of the watershed. Therefore, the Director finds the proposed deletion does not render the Indiana rules less effective than the Federal counterparts.

New subsections 33/71/(a)(2) are added to provide that the location of any discharge into a surface water body shall be identified. The Director finds the proposed language to be substantively identical to the Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2).

Subsections 33/71(a)(3) are amended by adding that the ownership of surface water bodies must be identified. The Director finds the proposed added requirements to be substantively identical to the counterpart Federal requirements at 30 CFR 780.21(b)(2) and 784.14(b)(2).

Subsections 33/71(b) are amended by deleting the existing language at subsections 33/71(b)(1) and adding in its place the requirement that permit applications shall include baseline information on seasonal flow. Indiana has also added the following requirements. At subsections 33/71(b)(2)(A), specific conductance corrected to 25 degrees celsius may be substituted for total dissolved solids. Subparagraphs 33/71(b)(2) (E), (F) and (G) are added to require total iron, total manganese, and baseline acidity and alkalinity information if there is a potential for acid mine drainage from the mining operation. The Director finds the addition of these provisions to be substantively identical to the Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2).

New subsections 33/71(c) have been added to provide that the director of IDNR shall require the applicant to provide additional information to evaluate the probable hydrologic consequences (PHC) and to plan remedial activities if the determination of PHC required by 310 IAC 12–3–47/81 indicates that adverse impacts are reasonably likely to occur to the hydrologic balance, or that acid- or toxic-forming material is present that is reasonably likely to result in contamination of ground or surface water supplies.

The Director finds the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 780.21(b)(3) and 784.14(b)(3) except that the Indiana language uses the term "reasonably likely" where the Federal regulations state that additional information shall be required if the PHC indicates that adverse impacts "may" occur or if contamination "may" occur. In its letter dated November 5, 1992, Indiana stated that Indiana will interpret the phrase "reasonably likely" as the Federal "may," and that Indiana will amend the language in the next regulation reform package. The Director finds, therefore, that the proposed language, with Indiana's interpretation discussed above, is no less effective than the Federal regulations at 30 CFR 780.21(b)(3) and 784.14(b)(3).

5. 310 IAC 12–3–46.5/80.5 Fish and Wildlife Protection and Enhancement

Indiana is adding these new sections to provide rules governing the required reclamation plan and the protection of fish and wildlife. The proposed rules are substantively identical to the Federal regulations at 30 CFR 780.16/784.21 with one exception. The proposed rules do not contain a counterpart to 30 CFR 780.16/784.21(c). These Federal provisions provide that, upon request, the regulatory authority shall provide the resource information and the protection and enhancement plan required by 30 CFR 780.16/784.21 to the FWS for their review. In response to OSM's concern about the lack of counterparts to the Federal regulations, Indiana asserted that with the MOU between the IDNR Division of Reclamation and the FWS the proposed rules are as effective as the Federal counterparts. Indiana also stated that, for clarity the State will incorporate the counterpart language in the next available rule reform package. The Director finds, and with the understanding that under the MOU between the IDNR and the FWS, the IDNR shall provide to the FWS (within 10 days of a request) the resource information and protection and enhancement plan required by the Indiana program, that the proposed rules are no less effective than the Federal regulations.

6. 310 IAC 12–3–47/81 Protection of Hydrologic Balance

Indiana proposes several nonsubstantive changes throughout these sections. In addition, Indiana proposes to add language at subsections 47(c) and 81(c) which provides that sampling and analysis shall be conducted under 310 IAC 12–5–27 (12–5–92 for underground mining). 310 IAC 12–5–27(c) and (12–5–92(c)) provides that water quality analysis and sampling shall be conducted according to the methodology in the sixteenth edition of "Standard Methods for the Examination of Water and Wastewater (1985)." The Director finds the proposed language to be no less effective than the Federal regulations at 30 CFR 780.21(a) which provide that all water-quality analysis shall be conducted according to the methodology in "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR parts 136 and 434.

7. 310 IAC 12–3–57 Underground: Identification of Interests

Indiana proposes numerous nonsubstantive changes throughout this section. In addition, at subsection 57(a)(2) language is added which provides that each application shall contain the names and addresses of every operator of a pipeline within the area affected.

Indiana has added the definition of "pipeline" to its rules (see Finding 1(c), above) to identify those facilities to which additional notification requirements and protection provisions contained in 310 IAC 12–3–57, 12–3–106, 12–5–99, 12–5–100, 12–5–131, and 12–5–133 will apply. The Director finds that while there is no direct Federal counterpart to the proposed language, the language is not inconsistent with SMCRA and is no less effective than the Federal regulations at 30 CFR part 778 which establish the minimum requirements for permit applications under SMCRA.

8. 310 IAC 12–3–78 Underground: General Permit Requirements

In addition to nonsubstantive wording changes to this section, Indiana proposes to add a new subsection 78(d). Proposed subsection 78(d) provides that if an application for a permit proposes to mine within a zone of influence of an underground mine, the application must include a typical detailed mine plan to a scale of no greater than one inch equals 100 feet. The mine plan shall depict the pillar, entry, crosscut, and

panel dimensions within the zone of influence. There is no direct Federal counterpart to the proposed language. However, the Director finds that the proposed language is not inconsistent with SMCRA at section 507(b) which provides that permit applications contain detailed maps or plans showing the land to be affected and other things specified by the regulatory authority. The Director also finds the proposed language to be consistent with and no less effective that the Federal regulations at 30 CFR 784.11.

9. 310 IAC 12–3–94 Experimental Practices

This section has been repealed and replaced with 310 IAC 12–3–94.1. The Director has determined that proposed 310 IAC 12–3–94.1 is substantively identical to the Federal regulations at 30 CFR 785.13 (see finding section A). The Director finds, therefore, that the proposed deletion of 310 IAC 12–3–94 will not render the Indiana program less effective than the Federal regulations.

10. 310 IAC 12–3–98 Prime Farmland

Indiana proposes nonsubstantive changes throughout this section. In addition, Indiana proposes to use the date "August 4, 1977" in several places in this section where the counterpart Federal regulations use the date "August 3, 1977." The Federal regulations at 30 CFR 785.17 concerning prime farmland provide that the prime farmland regulations do not apply to permits issued prior to August 3, 1977. The Indiana counterparts to the Federal "prior to August 3, 1977" language state prior to August 4, 1977. That is, the Federal language excludes August 3, 1977, from the exemption, whereas the Indiana language includes August 3, 1977, in the exemption. In its November 5, 1992, letter concerning this difference, Indiana stated that "no permits with an August 3, 1977, effective date have been issued by the Division." Indiana added that the difference, therefore, is moot. The Director agrees and finds that Indiana's use of the date August 4, 1977, in the proposed language at section 94 is no less effective than the Federal regulations at 30 CFR 785.17.

Indiana proposes to add a new subsection 98(c) which provides that subsection 98(d) applies to a permittee who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. In addition, proposed 98(c) provides that subsection 98(d) does not apply to an existing surface coal mining operation which held a valid permit on August 3, 1977, with continuous permits held since that date. As discussed above, Indiana's inclusion of August 3, 1977, in the exemption from prime farmland rules does not render the proposed rules less effective than the Federal prime farmland regulations. The Director finds that the proposed subsection 98(c) is no less effective than the Federal regulations at 30 CFR 785.17 (a) and (a)(1).

Indiana proposes to add a new subsection 98(c) which provides that subsection 98(d) applies to a permittee who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. In addition, proposed 98(c) provides that subsection 98(d) does not apply to an existing surface coal mining operation which held a valid permit on August 3, 1977, with continuous permits held since that date. As discussed above, Indiana's inclusion of August 3, 1977, in the exemption from prime farmland rules does not render the proposed rules less effective than the Federal prime farmland regulations. The Director finds that the proposed subsection 98(c) is no less effective than the Federal regulations at 30 CFR 785.17 (a) and (a)(1).

Indiana proposes to amend subsection 98(d)(1) to add that the soil survey required by subsection 98(d)(1) shall include a description of all soil mapping units and a soil profile for each unit that includes soil horizon depth, pH, and the range of soil densities for each prime farmland soil unit. The Director finds the proposed language is substantively identical to the counterpart Federal provision at 30 CFR 785.17(c)(1)(ii) except that the Federal regulations provide that the representative soil profile must be determined by the U.S. Soil Conservation Service. Therefore, the director is requiring that Indiana further amend the Indiana program to provide that the soil profile required under 310 IAC 12–3–98(d)(1) must be determined by the U.S. Soil Conservation Service.

11. 310 IAC 12–3–106 Permit Applications: Responsibility

In addition to nonsubstantive changes throughout this section, Indiana proposes to amend subsection 106(d)(4). Subsection (d)(4) is amended by deletion of the words "for the information pertaining to the coal seam itself" and replacement of those words by the words "information exempted from public disclosure under section 110 of this rule." In effect, the amendment provides that confidential information submitted with a permit will be protected under 310 IAC 12–3–110. The Director finds the proposed amendment is no less effective than the Federal regulations at 30 CFR 773.13(a)(2) which provide that a permit application shall be public information except for confidential information exempt from disclosure under 30 CFR 773.13(d).

12. 310 IAC 12–3–110 Permit Applications: Public Availability

Indiana is making several nonsubstantive changes to this section. In addition, Indiana is also proposing to amend subsection 110(a) to provide that information contained in a permit application on file with the director of IDNR is a public record under IC 5–14–3, except as provided in subsection 110(b). In its original submittal of this amendment, Indiana cited the State statute IC 5–15–3 rather than IC 5–14–3. In its November 5, 1992, letter to OSM, the IDNR clarified that IC 5–14–3 (Access to Public Records) is the correct citation. Indiana will correct the citation in the State's "errata" process and the correct citation will be published in the Indiana Register. The Director finds, with the understanding that the citation of Indiana's Access to Public Records statute will be corrected through Indiana's "errata" process, that the proposed amendments at subsection 110(a) are no less effective than the Federal regulations at 30 CFR 773.13(d)(1) concerning general availability of public records.

Indiana proposes to amend subsection 110(c) by deleting the phrase "is confidential" and adding in its place the phrase "is a trade secret." Indiana law defines "trade secret" at IC 24–2–3–2. The Indiana definition is not inconsistent with section 508 of SMCRA which provides for the confidentiality of information pertaining to the analysis of chemical and physical properties of the coal. The Director finds that the proposed amendment is no less effective than the Federal regulations at 30 CFR 773.13(d)(3)(ii) which provide that permit information required under section 508 of SMCRA that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential, is confidential.

Indiana is amending subsection 110(d) to provide that the director of IDNR shall provide for procedures to separate the information which is a public record from the information which is a trade secret. In addition to nonsubstantive wording changes, Indiana is deleting the word "confidential" and adding in its place "trade secret." While there is no direct

Federal counterpart to the proposed language, the Director finds the proposed language to be not inconsistent with SMCRA and no less effective than the Federal regulations at 30 CFR 773.13(d).

Indiana is amending subsection 110(e) to provide that an applicant must clearly identify information which the applicant wishes to protect as a trade secret and must submit that information separately from other portions of the application. The Director finds the proposed language to be no less effective than the confidentiality provision at 30 CFR 773.13(d)(3).

The Federal regulations at 30 CFR 773.13(d)(3) (iii) provide that confidential information shall be limited (in addition to those provisions identified at 30 CFR 773.13(d)(3) (i) and (ii)) to information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979 (Pub. L. 96–95, 93 Stat. 721, 16 U.S.C. 470). In its letter dated November 5, 1992, Indiana stated that its counterpart to the Federal provision cited above is at IC 13–4.1–3–3(b). The Director agrees. Indiana also stated that the provision at IC 13–4.1–3–3(b) concerning the confidentiality of the nature and location of archaeological resources on public and Indian land will be added to the state's rules in future rulemaking.

Indiana proposes to add a new subsection 110(f). Proposed subsection 110(f) provides that a person who opposes or seeks disclosure of information which pertains to the analysis of chemical and physical properties of the coal to be mined, or information claimed as a trade secret, may submit the request under 310 IAC 12–3–107. The person seeking or opposing disclosure and the applicant shall be notified in writing of an order made by the director of IDNR with respect to that request. The order is subject to administrative review under IC 4–21.5–3–5 and 310 IAC 12–3–118 and 119. The Director finds the proposed provision to be no less effective than the Federal provision concerning confidentiality at 30 CFR 773.13(d)(3) which also provides for procedures for persons both seeking and opposing disclosure of confidential information.

13. 310 IAC 12–3–116 Permit Applications: Terms and Conditions; Right of Entry

Indiana is proposing several non-substantive changes to this section. In addition, Indiana is adding a new subsection 116(e) to provide that the operator shall pay all reclamation fees required by 30 CFR part 870 for coal produced under the permit for sale, transfer, or use, in the manner required by 30 CFR part 870. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 773.17(g).

14. 310 IAC 12–3–127 Permits: Approval for Transfer, Assignment, or Sale of Permit Rights

Indiana is proposing numerous non-substantive changes throughout this section. In addition, Indiana proposes to add a new subsection 127(c)(4). Proposed subsection 127(c)(4) provides that the approval for a transfer, sale, or assignment of rights under a permit shall not be granted except on a written finding that a surface coal mining and reclamation operation owned or controlled by the applicant is not currently in violation of a Federal or State statute, rule, or regulation. If such a finding cannot be made, the applicant must establish that: (A) the current violation has been or is in the process of being corrected to the satisfaction of the agency which has jurisdiction over the violation; or (B) the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. An appeal taken from an order or determination of the IDNR must conform to IC 13–4.1. If the initial judicial review authority either denies a stay applied for in the appeal or affirms the violation, the applicant shall promptly submit documentation to establish the requirements of clause (A).

The Director finds that the proposed provision is substantively identical to and no less effective than the Federal regulations at 30 CFR 773.15(b)(1) (i) and (ii) except that the proposed provision does not also apply to persons who own or control the applicant and to persons owned or controlled by the applicant as do the Federal regulations at 30 CFR 773.15(b)(1)(ii). Therefore, the Director is requiring that Indiana further amend 310 IAC 12–3–127(c)(4) so the provision will also apply to persons who own or control the applicant and to persons owned or controlled by the applicant.

Indiana is adding a proposed new subsection 127(c)(5) to provide that approval for a transfer, sale, or assignment of rights under a permit shall not be granted except upon written finding that the written findings required under section 310 IAC 12–3–112 concerning permit approval or denial have been made. The Director finds that the proposed amendment is substantively identical to the Federal regulations at 30 CFR 774.17(d) concerning transfer, assignment, or sale of permit rights which provides that the written findings under 30 CFR 775.15(c) must be met for permit approval.

Indiana proposes to add new subsection (d) to provide that Indiana shall notify the permittee, the successor, any person who provides comments under 310 IAC 12–3–127, and OSM of the findings made under 310 IAC 12–3–127(c). The Director finds the proposed amendment is substantively identical to the Federal regulations at 30 CFR 774.17(e)(1) concerning notification.

15. 310 IAC 12–3–128 Permit Reviews

In addition to nonsubstantive changes, Indiana proposes to amend subsection (a) by adding that a successor in interest to a permittee shall immediately provide notice to the director of IDNR of the consummation of the transfer, assignment, or sale of permit rights. The Director finds the proposed language is substantively identical to the Federal regulations at 30 CFR 774.17.

16. 310 IAC 12–3–131 SOAP Eligibility

In addition to nonsubstantive changes, Indiana proposes to add new subsection 131(2)(E). Subsection 131(2)(E) provides that all coal produced by operations owned by members of the applicant's family and the applicant's relatives shall be attributed to the applicant unless the applicant establishes there is no direct or indirect business relationship between or among them. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 795.6(a)(2)(iv).

Indiana proposes to add a new subsection 131(3) to provide that to be eligible for assistance under the Small Operator Assistance Program (SOAP), an operation must also establish that the company was not organized or reorganized solely for the purpose of obtaining assistance. The Director finds the proposed language to be substantively identical to the counterpart Federal regulations at 30 CFR 795.6(a)(4).

17. IAC 12–4–3 Responsibilities of the IDNR

In addition to nonsubstantive changes, Indiana proposes to amend subsection 3(e) and add a new subsection 3(f). In subsection 3(e) Indiana proposes to delete reference to 30 CFR 800.50, the Federal regulations concerning forfeiture of bonds, and add in its place, reference to 310 IAC 12–4–17, Indiana's rules concerning forfeiture of bonds. The Director finds that the

deletion of the reference to 30 CFR 800.50 and the addition of the citation of Indiana's approved rules regarding forfeiture of bonds at 310 IAC 12–4–17 does not render 310 IAC 12–4–3(e) less effective than the Federal regulations concerning forfeiture of bonds.

Indiana proposes to add new subsection (3)(f) to provide that the IDNR shall require in the permit that adequate bond coverage be in effect at all times. Further, except as provided in 310 IAC 12–4–10(e)(2), operating without bond coverage is a violation of a permit. The Director finds the proposed amendment to be substantively identical to the counterpart Federal regulations at 30 CFR 800.4(g) concerning regulatory responsibilities.

18. 310 IAC 12–5–16 Hydrologic Balance; General Requirements

In addition to nonsubstantive changes throughout this section, Indiana proposes to add language to subsection 16(a). With the new language, subsection 16(a) provides that surface mining activities shall be planned and conducted to prevent material damage to the hydrologic balance outside the permit area. The Director finds the proposed language to be substantively identical to the counterpart Federal regulations at 30 CFR 816.41(a) concerning protection of the hydrologic balance.

19. 310 IAC 12–5–24 Hydrologic Balance; Impoundments

Indiana proposes to make numerous nonsubstantive changes throughout this section. In addition, Indiana proposes to amend subsection 24(a)(4) to provide that the impoundment must have an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The Director finds the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 816.49(a)(4). The Director notes that the proposed language contains a typographical error: the word "overstopping" should be "overtopping." In its November 5, 1992, letter, Indiana stated that the error will be corrected in the State's "errata" process.

Indiana proposes to delete the existing language in subsection 24(c) and to add new language in its place. Subsection 24(c) now provides that an impoundment must comply with 30 CFR 77.216 and have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions and a seismic safety factor of at least 1.2. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 816.49(a)(3).

Indiana proposes to add at subsection 24(c), language which provides that the vertical portion of any remaining highwall must be located enough below the low-water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. The Director finds the proposed language to be substantively identical to the counterpart Federal regulations at 30 CFR 816.49(a)(9).

Indiana also proposes to amend subsection 24(c) to provide that if surface runoff enters the impoundment, the side slope must be protected to prevent erosion. The Director finds the proposed language to be substantively identical to the Federal regulations at 30 CFR 816.49(a)(6). The Director also finds that the deletion of the previously approved language at subsection 24(c), in concert with the findings discussed above, does not render the Indiana program less effective than the Federal regulations.

Indiana proposes to amend subsection 24(f) concerning inspections. The proposed language provides that if an examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of IDNR of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director of IDNR shall be notified immediately. The Director shall notify the appropriate agencies that other emergency procedures are required to protect the public. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 816.49(a)(12). However, Indiana has added the proposed language to subsection 24(f) which pertains only to dams and embankments which meet the size or other criteria of 30 CFR 77.216(a), whereas the Federal regulations at 30 CFR 816.49(a)(12) pertain to all impoundments. The Director is approving the proposed language with the understanding that it applies to all dams and embankments and not just those dams and embankments meeting the size or other criteria of 30 CFR 77.216(a). In addition, the Director is requiring that Indiana further amend the Indiana program to clarify that all dams and embankments are subject to the examination and inspection provision which provides that if an examination or inspection discloses that a potential hazard exists, the director of IDNR shall be promptly informed of the finding and of the emergency procedures formulated for public protection and remedial action.

Subsection 24(h) is amended by nonsubstantive changes. However, Indiana uses the term dams "or" embankments where the Indiana rules at subsection 24(f) and 24(g) apply those provisions to dams "and" embankments. In its letter dated November 5, 1992, Indiana stated that Indiana will interpret the provision as if it read "and," and will correct the language in future rulemaking. The Director finds, with the understanding that proposed subsection 24(h) applies to dams "and" embankments, that the proposed amendments are no less effective than the Federal regulations.

20. 310 IAC 12–5–27 Surface and Groundwater Monitoring

In addition to nonsubstantive changes to this section, Indiana proposes to add a new subsection 27(a)(4). Subsection 27(a)(4) provides that if the analysis of a groundwater sample indicates noncompliance with a permit condition, the permittee must: (a) promptly notify the director of IDNR, and (b) immediately take any action required by the reclamation plan or by a permit condition. The proposed language is substantively identical to the Federal regulations at 30 CFR 816.41(c)(2) which also provide that the regulatory authority be notified whenever groundwater sampling indicates noncompliance, and that the operator immediately take the actions provided for in the hydrologic reclamation plan and permit conditions with one exception. The proposed Indiana language lacks a counterpoint to 30 CFR 773.17(e) which concerns permittee actions to minimize any adverse impacts to the environment or public health and safety resulting from noncompliance with any term or condition of the permit. Specifically, 30 CFR 773.17(e) specifies three minimum steps to be taken by the permittee. To be no less effective than the Federal regulations at 30 CFR 816.41(c)(2), the Indiana program must contain and reference a counterpoint to 30 CFR 773.17(e). The Director finds the proposed language at 310 IAC 12–5–27(a)(4) to be no less effective than the counterpart Federal regulations at 30 CFR 816.41(c)(2) except to the extent that the Indiana program lacks a referenced counterpoint to 30 CFR 773.17(e). In addition, the Director is requiring that Indiana further amend the Indiana program to be no less effective than 30 CFR 816.41(c)(2) which requires compliance with 30 CFR 773.17(e).

New subsection 27(c) has been added to provide that water quality analysis

and sampling shall be conducted according to the methodology in the 16th edition of Standard Methods for the Examination of Water and Wastewater (1985). The Director finds the proposed language is substantively identical to the Federal regulations at 30 CFR 780.21(a) concerning water sampling and analysis methodology.

21. 310 IAC 12–5–39 Disposal of Excess Spoil

a. In addition to nonsubstantive changes throughout this section, Indiana is adding new subsection 39(c) to provide that excess spoil areas, other than excess box cut spoil outlined under 310 IAC 12–5–39(b), shall be inspected by a registered professional engineer or other qualified specialist under the direction of a registered professional engineer, who shall periodically inspect the fill during construction. The professional engineer or specialist must be experienced in the construction of earth and rock fills. The Director finds the proposed language to be substantively identical to the Federal regulations at 30 CFR 816.71(h) except as discussed below.

The proposed language would exclude excess box-cut spoil outlined under 310 IAC 12–5–39(b) from the inspection requirements at 310 IAC 12–5–39(c). In response to OSM's comments concerning the proposed exclusion (Administrative Record Number IND–1258), Indiana stated that if all or part of the box-cut spoil is not required to achieve approximate original contour, application may be made to the Division of Reclamation for reclassification as excess spoil. Indiana further stated that if the box-cut spoil is reclassified as excess, then it automatically falls into the requirements of subsection (c) of 310 IAC 12–5–39. Under subsection 39(c), the excess box-cut spoil would be subject to the inspection requirements for excess spoil. OSM finds this explanation acceptable because it would eliminate the exclusion for excess box-cut spoil from the inspection requirements at 310 IAC 12–5–39(c).

However, the language of the Indiana rules at 310 IAC 12–5–39(b) and (c) are inconsistent with Indiana's explanation of their intended implementation of these rules. For example, proposed 310 IAC 12–5–39(c) specifically excludes excess box-cut spoil areas outlined under 310 IAC 12–5–39(b) from the inspection requirements at subsection 39(c).

The Director finds that the proposed language at 310 IAC 12–5–39(c) is no less effective than the Federal regulations at 30 CFR 816.71(h) except to the extent that the proposed language does not require that box-cut spoil which is excess spoil be inspected under 310 IAC 12–5–39(c). In addition, the Director is requiring that Indiana further amend 310 IAC 12–5–39(c) or otherwise amend the Indiana program to clarify that box-cut spoil which is excess spoil is subject to the inspection requirements of 310 IAC 12–5–39(c).

b. Indiana is adding new subsection 39(e) to provide that the registered professional engineer shall provide the director of IDNR with a certified report after each inspection required under subsection (c) of 310 IAC 12–5–39. The Director finds the proposed language at subsection 39(c) to be substantively identical to and no less effective than the Federal regulations at 30 CFR 816.71(h)(2). However, the Indiana program lacks a counterpart to 30 CFR 816.71(h)(4) which requires that a copy of each inspection report shall be retained at or near the mine site.

The Director is requiring, therefore, that the Indiana program be further amended to include a counterpart to 30 CFR 816.71(h)(4).

22. 310 IAC 12–5–42/106 Coal Processing Waste Banks; Inspection

a. Indiana is adding new language to subsections 42(c) and 106(c) to provide that in addition to the inspections required under subsections 42(b) and 106(b), regular inspections by the engineer, Mine Safety and Health Administration (MSHA) certified inspector, or other qualified person, must also be conducted during the placement and compaction of coal mine waste materials. Subsections 42(c) and 106(c) are also revised to provide that the director of IDNR "shall" require more frequent inspections under subsections 42/106(b) and 42/106(c) based upon a finding of the potential danger to the health or safety of the public and the potential harm to land, air, and water resources. Prior to this revision, the Indiana rules provided that the director of IDNR "may" require more frequent inspection under the identical circumstances. The Director finds the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 816/817.83(d) with the following exception. The Federal regulations provide that qualified professional specialists who conduct inspections of coal waste banks, must be under the direction of a qualified registered professional engineer. The proposed Indiana revisions, however, while authorizing inspections by MSHA certified inspectors and other qualified persons, do not require that such persons be under the direction of a qualified registered professional engineer. To the extent that the proposed Indiana rules do not require that inspections by MSHA certified inspectors and other qualified persons be under the direction of a qualified registered professional engineer, the proposed rules are less effective than the Federal regulations. Therefore, the Director is not approving the words "MSHA certified inspector, or other qualified person" which appear in the first sentence of subsections 42(c) and 106(c).

b. The approved Indiana language at subsections 310 IAC 12–5–42(a) and 106(a) provide that an MSHA certified inspector may conduct inspections of coal processing waste banks on behalf of the person conducting surface or underground mining operations. The approved language at 310 IAC 12–5–42(a) also provides for inspections by "another qualified person," while the proposed revision to 310 IAC 12–5–106(a) would add authorization of inspections by "another qualified person." As discussed above at Finding 22(a), the Federal regulations at 30 CFR 816/817.83(d) provide that such inspections be conducted by a registered professional engineer or by other qualified specialists under the direction of the professional engineer. Therefore, the existing language at 310 IAC 12–5–42(a) and 106(a) and the proposed language at 310 IAC 12–5–106(a) concerning authorization of inspections by "MSHA certified inspector, or another qualified person" is less effective than the Federal regulations.

Therefore, the Director is not approving the proposed language at 310 IAC 12–5–106(a) which would authorize inspections by MSHA certified inspectors or other qualified persons. In addition, the Director is requiring that Indiana amend 310 IAC 12–5–42(a) and 106(a) to either delete authorization of inspections by MSHA certified inspectors or other qualified persons, or clarify that inspections by such persons must be under the direction of a qualified registered professional engineer.

c. Indiana has added new subsections 42(i) and 106(i) as counterparts to the Federal regulations at 30 CFR 816/817.83(d)(3). The Director finds the proposed language to be substantively identical to the counterpart Federal regulations with the following exceptions. The proposed language references 310 IAC 12–5–49(b) as requiring drainage systems (underdrains) and protective filters. The citation is incorrect. The correct citation is 310 IAC 12–5–42(b). In its letter dated

November 5, 1992, Indiana stated that the citation will be corrected through the State's "errata" process. The proposed language also contains a typographical error. The term "prove" should read "provide." Indiana will also correct this via the "errata" process. The Director finds the proposed subsections 42/106(i), with the corrections discussed above, are no less effective than the Federal regulations.

23. 310 IAC 12–5–43/107 Waste Banks; Water Control

Indiana has proposed to delete these sections from the Indiana program. The provisions (a) and (b) from 310 IAC 12–5–43/107 have been incorporated into 310 IAC 12–5–43.1/107.1 and have been found to be no less effective than the Federal regulations by the Director (see Findings section A above). The provisions under 310 IAC 12–5–43/107(c) concerning quality of water discharged from a coal processing waste bank are governed by the Indiana regulations concerning hydrologic balance. For example, 310 IAC 12–5–16(c) provides that in no case shall Federal and Indiana water quality statutes, regulations, standards, or effluent limitations be violated. The Director finds, therefore, that the proposed deletion of 310 IAC 12–5–43/107 will not render the Indiana program less effective than the Federal regulations.

24. 310 IAC 12–5–48 Coal Processing Waste Dams and Embankments

Indiana proposes to amend this provision by deleting the existing language and adding new language in its place. The Director finds the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 816.84 concerning coal mine waste impounding structures with the following exceptions.

a. The proposed Indiana rule at subsection 48(a) provides that new or existing impounding structures constructed of coal mine waste or intended to impound coal mine waste must comply with the Indiana provisions at section 310 IAC 12–5–48 and sections 12–5–49 and 50. The Director finds the proposed rules to be substantively identical to the counterpart Federal regulations at 30 CFR 816.84 except that the cited provisions of 310 IAC 12–5–48, 49, and 50 do not comprise a complete counterpart to 30 CFR 816.81 which is cited in 30 CFR 816.84. Therefore, the Director is approving 310 IAC 12–5–48(a) except to the extent that the referenced citation of 310 IAC 12–5–48, 49, and 50 do not comprise a complete counterpart to the Federal regulations at 30 CFR 816.81. In addition, the Director is requiring that Indiana further amend 310 IAC 12–5–48, 49 and 50 or otherwise amend the Indiana program to provide a complete counterpart to 30 CFR 816.81 as cited by the Federal regulations at 30 CFR 816.84.

b. Proposed subsection 48(d) provides that if an impounding structure conforms with 30 CFR 77.216(a) the combination of principal and emergency spillway shall be able to safely pass runoff from the 100-year, six-hour design precipitation event. The counterpart Federal provision at 30 CFR 816.84(b)(2) provides that such a structure shall safely control the probable maximum precipitation of a six-hour precipitation event. Therefore, the proposed 100-year, six-hour standard is less effective than the Federal regulations and cannot be approved. The Director is requiring that Indiana further amend the Indiana program to provide that coal mine waste impounding structures which conform to 30 CFR 77.216 have sufficient capacity to safely control the probable maximum precipitation of a six-hour precipitation event.

c. Proposed subsection 48(f) provides that the term "impounding structure" does not include incised impoundments or impoundments plugged by massive earthen fills which would be treated as incised impoundments under good engineering practices.

According to the Federal regulations at 30 CFR 701.5, an impoundment is a water, sediment, slurry, or other liquid or semi-liquid holding structure or depression, either naturally formed or artificially built. An incised impoundment is an impoundment located entirely within or below the surface of the surrounding land. Such an impoundment has no built-up sides or dams which impound, for example, water. Therefore, incised impoundments cannot fail catastrophically. This is different than an impoundment with an embankment which holds back water (or other substance) above the pre-existing ground surface. Failure by shearing or eroding of the embankment can release a hazardous rush of impounded water.

An impoundment plugged by a massive earthen fill can be viewed as an incised impoundment, having characteristics of both an embankment impoundment and an incised impoundment. In such an impoundment, the embankment which acts as a dam is so extraordinarily large that the impoundment can be viewed as being incised into the earth. Consequently, such an impoundment is not likely to fail as would an impoundment with a normal-size dam (40 feet high with 2h:1v side slopes, crest of 20 feet). Indeed, an impoundment plugged by a massive earthen fill would behave as an incised impoundment.

In its letter dated August 19, 1992, OSM requested that Indiana provide additional information to explain the concept of "massive earthen fills" as proposed by Indiana. In response, Indiana stated in the November 5, 1992, letter that the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) makes determinations on the amount of fill necessary for a structure to be considered incised. Indiana further stated that the State would defer to MSHA's determination as to when a "massive earthen fill" would no longer be considered an "impounding structure."

MSHA (District 8, which covers Indiana) does make such determinations (Administrative Record Number IND–1200). Typically, to qualify as an incised impoundment, a massive earthen fill would have interior and exterior embankment slopes of 3h:1v, have a crest width of greater than 150 feet, and have a fill depth of less than 40 feet. Such a fill would have a base of at least 390 feet. Overall, the total volume of a minimum-size massive earthen fill would be 2.7 times greater than that of a normal-size dam. These minimum dimensions would be contingent on low hazard risk of the impoundment, and favorable soil conditions. The minimum size of the massive earthen fill would increase as hazard or volume of impounded water increase and soil conditions worsen.

Soil conditions and topography are very important to the consideration of massive earthen fills creating the equivalent to incised impoundments. The massive earthen fill described above requires a considerable extent of flat-lying terrain—390 feet. If the terrain were not flat-lying, any overtopping of an impoundment would result in a hazardous flow concentrated and directed downslope. Consequently, only flat-lying topography would be free of such a hazard; Indiana has such flat-lying topography.

There is no direct Federal counterpart to the proposed language. The Director finds the proposed language is not inconsistent with SMCRA at section 101(g) which recognizes the diversity in terrain and other such factors in the various coal mining States, and section 515(b)(13) concerning coal mine waste. The Director also finds the proposed language to be no less effective than the Federal regulations at 30 CFR 816.84

concerning impounding structures. The Director is making this finding with the understanding that MSHA will make all the determinations in Indiana as to when a "massive earthen fill" would no longer be considered an "impounding structure." The Director notes that this finding does not free the permittee from adhering to all applicable State and Federal water quality standards, nor from any other applicable performance standards in 310 IAC 12–5. In addition, the Director is requiring that Indiana further amend 310 IAC 12–5–48(f) to clarify that Indiana will seek and defer to MSHA's determination as to when a "massive earthen fill" would no longer be considered an "impounding structure."

25. 310 IAC 12–5–99 Explosives

In addition to nonsubstantive changes to this section, Indiana is proposing to add a new subsection 99(d)(1)(c). The proposed new language provides that an anticipated blast design shall be submitted if blasting operations will be conducted within 1,000 feet of a pipeline. While there is no direct Federal counterpart to the proposed language, the Director finds the proposed language is not inconsistent with SMCRA and is no less effective than the Federal regulations at 30 CFR 817.61 concerning use of explosives and which serve to protect the public.

26. 310 IAC 12–5–104(10) Underground: Spoil Placement; Certification.

The proposed language provides that spoil shall be placed in horizontal lifts not exceeding four feet thick, except where the director of IDNR approves a greater thickness based upon: (a) A certification by a registered professional engineer that the design ensures the stability of the fill; and (b) a demonstration from the permittee that all other applicable requirements of 310 IAC 12–5–104 are satisfied. The counterpart Federal regulations at 30 CFR 817.71(e)(2) provide that the regulatory authority may approve a design which incorporates placement of excess spoil in horizontal lifts other than four feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements. The proposed language differs from the counterpart Federal regulations in that the proposed language does not require the registered professional engineer to certify both that the design ensures the stability of the fill, and that the design will meet the other applicable requirements. The Director finds that the proposed language is no less effective than the counterpart Federal regulations except to the extent that the proposed language fails to require the registered professional engineer to certify that the fill design meets all applicable requirements. In addition, the Director is requiring that Indiana further amend 310 IAC 12–5–104(10) to provide that the registered professional engineer must certify that the design will meet all applicable requirements.

27. 310 IAC 12–5–121.5 Underground: Previously Mined Areas

Indiana proposes to add this section as a counterpart to the Federal regulations at 30 CFR 817.106. The Director finds the proposed rule to be substantively identical to the counterpart Federal regulations. The Director notes that the proposed language contains two typographical errors which Indiana has indicated will be corrected in the State's "errata" process. At subsection 121.5(b)(1), the word "soil" should read "spoil." At 121.5(b)(2), the words "back fill" should read "backfill."

28. 310 IAC 12–5–131 Underground: Public Notice

In addition to nonsubstantive changes, Indiana proposes to add that the permittee of an underground mine must mail a mining schedule to operators of pipeline within the area above and within 500 feet of the underground workings. There is no direct Federal counterpart to the proposed language concerning pipelines. However, the Director finds that the proposed language is not inconsistent with SMCRA at section 516 concerning surface effects of underground coal mining operations, and is no less effective than 30 CFR 817.122 which provides that such notification be provided to owners and occupants of surface property and structures.

29. 310 IAC 12–5–144 Auger Mining

Indiana has made nonsubstantive changes throughout this section. In addition, subsection 144(c)(1) is amended to clarify that if sealing of auger holes within 72 hours is not possible, the discharge shall be treated within 72 hours after completion to meet applicable effluent limitations and water quality standards until the hole is sealed. The Director finds the revised subsection 144(c)(1) to be substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 819.15(b)(1).

Subsection 144(c)(2) has been amended by deleting some existing language and adding new language. As amended, subsection 144(c)(2) provides that holes which are not discharging water containing toxic-forming or acid-forming material shall be sealed as contemporaneously as practicable with the augering operation in accordance with a schedule approved by the Natural Resources Commission in the approved permit or by the director of IDNR. The Director finds the amended language to be substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 819.15(b)(2).

Subsection 144(d) is being amended by deleting the word "and" and adding in its place the word "or." The effect of this amendment would be to make compliance with the provisions of subsections 144(d)(1) and 144(d)(2) an either/or option. However, the counterpart Federal regulations at 30 CFR 819.15(c)(1) provide that auger holes need not be sealed with an impervious material so as to prevent drainage if the regulatory authority determines that both the resulting impoundment may create a hazard and the drainage from the holes does not pose a threat of pollution. Therefore, the proposed use of "or" at subsection 144(d)(1) is less effective than the Federal regulations at 30 CFR 819.15(c)(1) and is not approved. In addition, the Director is requiring that Indiana further amend subsection 144(d)(1) to provide that auger holes need not be plugged if the conditions at both 144(d)(1) and 144(d)(2) are found to exist.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Bureau of Mines (BOM) had two comments (Administrative Record Number IND–1077). BOM said that the meaning of the term "*sic*" which appears at 310 IAC 12–3–6(c)(1) is unclear. In response, the Director notes that the term "*sic*" means that an error in spelling appears in the text. In this case, the word "an" should be "and."

BOM also said there appears to be a lack of consistency in the use of the terms "application" and "permit" and what they require. The Director disagrees. The term "application" and "permit" are used accurately in the proposed rules. The term "application" consistently refers to the document an

applicant must submit to the regulatory authority as part of the process of obtaining a permit. The term "permit" consistently refers to the document the regulatory authority issues to an applicant upon the applicant's successful completion of the application process.

The U.S. Fish and Wildlife Service recommended (Administrative Record Number IND–1075) that 310 IAC 12–3–33(a)(3) and 310 IAC 12–3–71(a)(3) be amended to specifically include "wetlands." As discussed in finding 4, above, the proposed Indiana language at 310 IAC 12–3–33/71(a)(3) is substantively identical to the counterpart Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2). The cited Federal regulations do not specifically identify "wetlands" as water bodies to be identified. However, the list of surface water bodies identified in the proposed rules (and in the counterpart Federal regulations) is not an exhaustive list as the words "and similar water bodies" indicates. Wetlands, of course, would be one example of a similar water body.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the May 21, 1992, **Federal Register** (57 FR 21634). The comment period closed on June 22, 1992. No comments were received during the comment period, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

V. Director's Decision

Based on the findings above, the Director is approving, except as noted below, Indiana's program amendment number 92–1 as submitted by Indiana on March 26, 1992, and clarified on November 5, 1992, February 1, 1993, and May 19, 1993.

As discussed above in Finding 1(a), the Director is requiring that Indiana amend 310 IAC 12–0.5–6(4), (5), and (6) to clarify that Indiana's use of the terms "an" and "a" to refer to sites and areas which would be considered "affected areas" means "any" as used in the counterpart Federal definition at 30 CFR 701.5.

As discussed above in Finding 1(d), the Director is approving the definition of "previously mined area" except to the extent that the definition does not limit the definition to apply to lands affected prior to August 3, 1977, that have not been reclaimed to the standards of 30 CFR chapter VII. The Director is also requiring that Indiana amend 310 IAC 12–0.5–91.5 to provide that "previously mined area" also means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII.

As discussed above in Finding 10, the Director is approving 310 IAC–3–98 except to the extent that the proposed rule fails to require that the soil profile required by 310 IAC 12–3–98(d)(1) be determined by the U.S. Soil Conservation Service. The Director is requiring that Indiana amend the Indiana program to provide that the soil profile required under 310 IAC 12–3–98(d)(1) must be determined by the U.S. Soil Conservation Service.

As discussed above in Finding 12, the Director is approving 310 IAC 12–3–110 with the understanding that the citation of Indiana's Access to Public Roads statute at 310 IAC 12–3–110(a) will be corrected through the State's "errata" process.

As discussed above in Finding 14, the Director is approving 310 IAC 12–3–127 except to the extent that subsection 127(c)(4) does not also apply to persons who own or control the applicant and to persons owned or controlled by the applicant. In addition, the Director is requiring that Indiana amend 310 IAC 12–3–127(c)(4) so the provision will also apply to persons who own or control the applicant and to persons owned or controlled by the applicant.

As discussed above in Finding 19, the Director is approving 310 IAC 12–5–24(f) with the understanding that it applies to all dams and embankments and not just those dams and embankments meeting the size or other criteria of 30 CFR 77.216(a). The Director is also requiring that Indiana amend 310 IAC 12–5–24(f) or otherwise amend the Indiana program to clarify that all dams and embankments are subject to the examination and inspection provision which provides that if an examination or inspection discloses that a potential hazard exists, the director of IDNR shall be promptly informed of the finding and of the emergency procedures formulated for public protection and remedial action.

As discussed above in Finding 19, the Director is approving 310 IAC 12–5–24(h) with the understanding that subsection 24(h) applies to dams "and" embankments.

As discussed above in Finding 20, the Director is approving 310 IAC 12–5–27 except to the extent that subsection 27(a)(4) lacks a referenced counterpart to 30 CFR 773.17(e). The Director is also requiring that Indiana amend the Indiana program to be no less effective than 30 CFR 816.41(c)(2) which requires compliance with 30 CFR 773.17(e).

As discussed above in Finding 21(a), the Director is approving 310 IAC 12–5–39 except to the extent that 12–5–39(c) does not require that box-cut spoil which is excess spoil be inspected under 310 IAC 12–5–39(c). The Director is also requiring that Indiana amend 310 IAC 12–5–39(c), or otherwise amend the Indiana program, to clarify that box-cut spoil which is excess spoil is subject to the inspection requirements of 310 IAC 12–5–39(c).

As discussed above in Finding 21(b), the Director is requiring that the Indiana program be further amended to include a counterpart to 30 CFR 816.71(h)(4).

As discussed in Finding 22(a), the Director is not approving the words "MSHA certified inspector, or other qualified person" as proposed at subsections 310 IAC 12–5–42(c) and 106(c).

As discussed in Finding 22(b), the Director is not approving the proposed language at 310 IAC 12–5–106(a) which would authorize inspections by MSHA certified inspectors or other qualified persons.

As discussed in Finding 22(b), the Director is requiring that Indiana amend 310 IAC 12–5–42(a) and 12–5–106(a) to either delete authorization of inspections by MSHA certified inspectors or other qualified persons, or clarify that inspections by such persons must be under the direction of a qualified registered professional engineer.

As discussed in Finding 22(c), the Director is approving 310 IAC 12–5–42(i) and 12–5–106(i) with the understanding that the citation which reads "310 IAC 12–5–49(b)" will be corrected to read "310 IAC 12–5–42(b)" and the word "prove" will be corrected to read "provide."

As discussed in Finding 24(a), the Director is approving 310 IAC 12–5–48(a) except to the extent that the referenced citation of 310 IAC 12–5–48, 49, and 50 do not comprise a complete counterpart to 30 CFR 816.81. The Director is also requiring that Indiana further amend 310 IAC 12–5–48, 12–5–49, and 12–5–50 or otherwise amend the Indiana program to provide a complete counterpart to 30 CFR 816.81 which is cited by the Federal regulations at 30 CFR 816.84.

As discussed above in Finding 24(b), the Director is not approving the proposed standard of a 100-year, six-hour precipitation event at 310 IAC 12–5–48(d). The Director is requiring that Indiana amend 310 IAC 12–5–48(d) to provide that coal mine waste impounding structures which conform to 30 CFR 77.216 have sufficient capacity to safely control the probable

maximum precipitation of a six-hour precipitation event.

As discussed above in Finding 24(c), the Director is approving 310 IAC 12–5–48(f) with the understanding that MSHA will make all the determinations in Indiana as to when a "massive earthen fill" would no longer be considered an "impounding structure". The Director is also requiring that Indiana amend 310 IAC 12–5–48(f) to clarify that Indiana will seek and defer to MSHA's determination as to when a "massive earthen fill" would no longer be considered an "impounding structure."

As discussed in Finding 26, the Director is approving 310 IAC 12–5–104(10) except to the extent that it fails to require the registered professional engineer to certify that the fill design meets all applicable requirements. The Director is also requiring that Indiana further amend 310 IAC 12–5–104(10) to provide that the registered professional engineer must certify that the design will meet all applicable requirements.

As discussed above in Finding 29, the Director is not approving the deletion of the word "and" and the addition of the word "or" at 310 IAC 12–5–144(d)(1). In addition, the Director is requiring that Indiana amend 310 IAC 12–5–144(d)(1) to provide that auger holes need not be plugged if the conditions at both 310 IAC 12–5–144(d)(1) and (d)(2) are found to exist.

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 9, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 914.15, paragraph (vv) is added to read as follows:

§ 914.15 Approved of regulatory program amendments

* * * * *

(vv) The following amendment (Program Amendment Number 92–1) to the Indiana Administrative Code (IAC) as submitted to OSM on March 26, 1992, and clarified on November 5, 1992, February 1, 1993, and May 19, 1993, is approved, except as noted below, effective August 16, 1993. The following provisions are not approved: The deletion of the word "and" and the addition of the word "or" in its place at

310 IAC 12–5–144(d)(1) is not approved; the words "MSHA certified inspector, or other qualified person" as proposed at subsections 310 IAC 12–5–42(c) and 12–5–106(c) are not approved; and the proposed language at 310 IAC 12–5–106(a) which would authorize inspections by MSHA certified inspectors or other qualified persons is not approved.

The following provisions are approved:

310 IAC 12–0.5–6—Definition of affected area.
310 IAC 12–0.5–32.5—Definition of cumulative impact area.
310 IAC 12–0.5–90.5—Definition of pipeline.
310 IAC 12–0.5–91.5—Previously mined area: except to the extent that the definition does not limit previously mined areas to lands affected prior to August 3, 1977, that have not been reclaimed to the standards of 30 CFR chapter VII.
310 IAC 12–2–6—Procedures for petition.
310 IAC 12–2–7—Processing, record keeping, and notification.
310 IAC 12–3–6—Permits; format and contents.
310 IAC 12–3–30.5—Environmental resources: fish and wildlife.
310 IAC 12–3–33—Surface mining; surface water information.
310 IAC 12–3–46.5—Reclamation plan; fish and wildlife.
310 IAC 12–3–47—Surface permits; protection of hydrologic balance.
310 IAC 12–3–57—Underground permits; identification of interests.
310 IAC 12–3–68.5—Environmental resources: fish and wildlife.
310 IAC 12–3–71—Underground mining; surface water information.
310 IAC 12–3–78—Underground mining; general requirements.
310 IAC 12–3–80.5—Reclamation plan; fish and wildlife.
310 IAC 12–3–81—Underground mining; protection of hydrologic balance.
310 IAC 12–3–94—Repealed.
310 IAC 12–3–94.1—Experimental practices.
310 IAC 12–3–98—Prime farmland: except to the extent that the rule fails to require the soil profile required under 310 IAC 12–3–98(d)(1) be determined by the U.S. Soil Conservation Service.
310 IAC 12–3–106—Permit review, public participation, and approval/disapproval.
310 IAC 12–3–110—Permit terms and conditions; public availability: with the understanding that the citation of Indiana's Access to Public Roads statute at 310 IAC 12–3–110(a) will be corrected.
310 IAC 12–3–116—Right of entry.
310 IAC 12–3–127—Transfer, assignment, or sale of permit rights: except to the extent that 310 IAC 12–3–127(c)(4) does not apply to persons who own or control the applicant and to persons owned or controlled by the applicant.
310 IAC 12–3–128—Succeeding to rights granted under a permit.
310 IAC 12–3–131—SOAP eligibility.
310 IAC 12–4–3—Responsibilities of Department of Natural Resources.
310 IAC 12–4–16—Performance bond release.
310 IAC 12–5–16—Hydrologic balance.
310 IAC 12–5–24—Permanent and temporary impoundments: with the understanding that 310 IAC 12–5–24(f) concerning inspections applies to all size dams and embankments, and that subsection 24(h) applies to dams "and" embankments.
310 IAC 12–5–27—Surface and groundwater monitoring: except to the extent that 310 IAC 12–5–27(a)(4) lacks a referenced counterpart to 30 CFR 773.17(e).
310 IAC 12–5–30—Water discharge into underground mine.
310 IAC 12–5–32—Stream buffer zone.
310 IAC 12–5–39—Disposal of excess spoil: except to the extent that the rule does not require that box-cut spoil which is excess spoil be inspected under 310 IAC 12–5–39(c).
310 IAC 12–5–42—Coal processing waste banks; inspection: except the words "MSHA certified inspector, or other qualified person" which appear in the first sentence of subsection 42(c) are not approved, and with the understanding that at subsection 42(i), the citation which reads "310 IAC 12–5–49(b)" will be corrected to read "310 IAC 12–5–42(b), and the word "prove" will be corrected to read "provide."
310 IAC 12–5–43—Repealed.
310 IAC 12–5–43.1—Coal mine waste; water control measures.
310 IAC 12–5–48—Coal processing waste dams and embankments: except to the extent that at 310 IAC 12–5–48(a) the referenced citation of 310 IAC 12–5–48, 49, and 50 do not comprise a complete counterpart to 30 CFR 816.81, and at 12–5–48(d), the proposed 100-year, six-hour standard is not approved, and at 310 IAC 12–5–48(f) with the understanding that MSHA will make all the determinations in Indiana as to when a "massive earthen fill" would no longer be considered an "impounding structure."
310 IAC 12–5–51—Fish and wildlife.
310 IAC 12–5–55.1—Backfilling and grading.
310 IAC 12–5–57.5—Surface mining; backfilling/grading previously mined areas.
310 IAC 12–5–82—Underground mining; hydrologic balance.
310 IAC 12–5–92—Underground mining; surface and ground water monitoring.
310 IAC 12–5–95—Underground mining; discharge of water into underground mine.
310 IAC 12–5–97—Underground mining; stream buffer zones.
310 IAC 12–5–99—Underground mining; explosives.
310 IAC 12–5–100—Underground mining; preblasting survey.
310 IAC 12–5–104—Underground mining; disposal of waste and excess spoil: except to the extent that 310 IAC 12–5–104(10) fails to require the registered professional engineer to certify that the fill design meets all applicable requirements.
310 IAC 12–5–106—Underground mining; waste banks site inspection: except the language at 310 IAC 12–5–106(a) which would authorize inspections by MSHA certified inspectors or another qualified person is not approved, and the words "MSHA certified inspector, or other qualified person" which appear in the first sentence of subsection 106(c) are not approved, and with the understanding that at subsection 106(i), the citation which reads "310 IAC 12–5–49(b)" will be corrected to read "310 IAC 12–5–42(b)," and the word "prove" will be corrected to read "provide."
310 IAC 12–5–107—Repealed.
310 IAC 12–5–107.1—Coal mine waste; water control measures.
310 IAC 12–5–115—Underground mining; protection of fish and wildlife.
310 IAC 12–5–119.1—Underground mining; backfilling and grading.
310 IAC 12–5–121.5—Underground mining; backfilling/grading previously mined areas.
310 IAC 12–5–131—Underground mining; subsidence control; public notice.
310 IAC 12–5–144—Auger mining: except the deletion of the word "and" and addition of "or" in its place at 310 IAC 12–5–144(d) is not approved.

3. In § 914.16, paragraphs (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), and (aa) are added to read as follows:

§ 914.16 Required program amendments.

* * * * *

(n) By January 7, 1994, Indiana shall amend 310 IAC 12–0.5–6(4), (5) and (6)

to clarify that Indiana's use of the terms "an" and "a" to refer to sites and areas which would be considered "affected areas" means "any" as used in the counterpart Federal definition of "affected area" at 30 CFR 701.5.

(o) By January 7, 1994, Indiana shall amend 310 IAC 12–0.5–91.5 to be no less effective than the Federal definition at 30 CFR 701.5 which reads "previously mined area means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII."

(p) By January 7, 1994, Indiana shall amend the Indiana program to provide that the soil profile required under 310 IAC 12–3–98(d)(1) must be determined by the U.S. Soil Conservation Service as required by 30 CFR 785.17(c)(1)(ii).

(q) By January 7, 1994, Indiana must amend 310 IAC 12–3–127(c)(4) so the provision will also apply to persons who own or control the applicant and to persons owned or controlled by the applicant as is required by 30 CFR 773.15(b)(1)(ii).

(r) By January 7, 1994, Indiana must amend 310 IAC 12–5–24(f) or otherwise amend the Indiana program to clarify that all dams and embankments are subject to the examination and inspection provision which provides that if an examination or inspection discloses that a potential hazard exists, the director of IDNR shall be promptly informed of the finding and of the emergency procedures formulated for public protection and remedial action as is required by 30 CFR 816.49(a)(12).

(s) By January 7, 1994, Indiana shall amend 310 IAC 12–5–27(a)(4) or otherwise amend the Indiana program to be no less effective than 30 CFR 816.41(c)(2) which references and requires compliance with 39 CFR 773.17(e).

(t) By January 7, 1994, Indiana shall amend 310 IAC 12–5–39(c), or otherwise amend the Indiana program to clarify that box-cut spoil which is excess spoil is subject to the inspection requirements of 310 IAC 12–5–39(c).

(u) By January 7, 1994, Indiana shall amend the Indiana program by adding a counterpart to 30 CFR 816.71(h)(4).

(v) By January 7, 1994, Indiana shall amend 310 IAC 12–5–42(a) and 12–5–106(a) to either delete authorizations of inspections by MSHA certified inspectors of other qualified persons, or clarify that inspections by such persons must be under the direction of a qualified registered professional engineer.

(w) By January 7, 1994, Indiana shall amend 310 IAC 12–5–48, 12–5–49, and 12–5–50 or otherwise amend the Indiana program to be no less effective than the Federal regulations at 30 CFR 816.84 by providing a complete counterpart to 30 CFR 816.81 which is cited in 30 CFR 816.84.

(x) By January 7, 1994, Indiana shall amend 310 IAC 12–5–48(d) to provide that coal mine waste impounding structures which conform to 30 CFR 77.216 have sufficient capacity to safely control the probable maximum precipitation of a six-hour precipitation event as is required by 30 CFR 816.48(b)(2).

(y) By January 7, 1994, Indiana shall amend 310 IAC 12–5–48(f) to clarify that Indiana will seek and defer to the Mine Safety and Health Administration's (MSHA) determination as to when a "massive earthen fill" would no longer be considered an "impounding structure."

(z) By January 7, 1994, Indiana shall amend 310 IAC 12–5–104(10) to provide that the registered professional engineer must certify that the design will meet all applicable requirements.

(aa) By January 7, 1994, Indiana shall amend 310 IAC 12–5–144(d)(1) to provide that auger holes need not be plugged if the conditions at both 310 IAC 12–5–144(d)(1) and (d)(2) are found to exit.

[FR Doc. 93–19651 Filed 8–13–93; 8:45 am]
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30 CFR Part 935

Ohio Permanent Regulatory Program; Normal Husbandry Practices

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the partial approval and deferral of Revised Program Amendment Number 61R to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Ohio Administrative Code (OAC) Section 1501:13–9–15(F). The proposed amendment identifies seeding, planting, fertilizing, and other practices which may be performed without restarting the five-year period of operator responsibility for reclamation success.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated February 11, 1993, Ohio submitted proposed Program Amendment Number 61R with revisions to OAC 1501:13–9–15(F) (Administrative Record No. OH–1831). The proposed revisions identified seeding, planting, fertilizing, and other practices which Ohio would consider to be normal husbandry practices which may be performed on mined lands without restarting the operator's period of responsibility for reclamation success.

OSM announced receipt of the proposed amendment in the April 1, 1993, **Federal Register** (58 FR 17173), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on May 3, 1993.

OSM reviewed the amendment and met with Ohio on April 30, 1993, to discuss issues and to request clarification of the proposal. As a result of this meeting, Ohio submitted a revised amendment (OH–61R) to OSM on June 11, 1993 (Administrative Record No. OH–1888).

OSM announced receipt of the revised amendment in the July 6, 1993, **Federal Register** (58 FR 36177), and in the same notice, reopened the public comment period and provided an opportunity for a public meeting. The public comment period closed on July 21, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's

findings concerning the proposed amendment to the Ohio program. Only substantive changes are discussed in detail. Revisions which are not discussed below concern nonsubstantive wording changes or revise cross-references and paragraph notations to reflect organizational changes. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

Ohio proposes to reorganize OAC 1501:13–9–15 and to add new regulatory language which will clarify the practices which the State considers nonaugmentative. These revisions are proposed in OAC 1501:13–9–15(F) which consists of seven subparagraphs. Revisions found in subparagraphs (F)(2), (F)(4), (F)(5), (F)(6), and (F)(7) are discussed in these findings.

Ohio proposes to revise subparagraph (F)(2) by deleting introductory language to the subparagraph. The Director finds that the revision is nonsubstantive in nature and that revised subpragraph (F)(2) is no less effective than the Federal rules.

Ohio proposes to revise subparagraph (F)(4) by deleting the word "agronomic" which is used in the existing rule as an adjective to describe the types of practices that will not be considered augmentative. The effect of the proposed revision is to remove the suggestion that nonaugmentative practices are limited to applied plant sciences dealing with crops. The Federal rules at 30 CFR 816.116(c)(4) refer to nonaugmentative practices as "normal husbandry practices" and "selective husbandry practices." In adopting these terms, OSM stated in the preamble discussion that it wanted to avoid restricting approvable practices to the manipulation of the soil alone (53 FR 34641, September 7, 1988). Ohio's deletion of the word "agronomic" is consistent with OSM's preamble discussion that nonaugmentative practices should not be limited to the manipulation of soils. The Director, therefore, finds that the proposed revision of subparagraph (F)(4) is no less effective than 30 CFR 816.116(c)(4).

Ohio proposes in subparagraph (F)(4)(a) to allow seeding, applying soil amendments, and irrigating as practices that will not be considered augmentative when they are recommended by or specified in technical guidelines published by the Ohio State University Cooperative Extension Service as normal practices for maintaining productivity on cropland, pastureland, or grazing land. The rate of application must be an accepted local practice for comparable unmined lands that can be expected to continue as a postmining practice. Ohio indicated that it will use as a technical guideline the Ohio Agronomy Guide when deciding whether a specific practice is augmentative. The Ohio Agronomy Guide is the official compilation of adaptive research results and recommendations from the research and extension programs in the Department of Agronomy at Ohio State University. It includes seeding, fertilization and irrigation recommendations for crops and forage production on unmined land in Ohio. The Director has determined that this publication represents normal husbandry practices in Ohio and, therefore, finds that subparagraph (F)(4)(a) is no less effective than 30 CFR 816.116(c)(4).

Ohio proposes to revise subparagraph (F)(4)(b) which concerns the repair of rills and gullies as a normal husbandry practice. OSM will consider this revision as part of proposed amendment 56R and will render a decision on the proposal in a forthcoming rulemaking.

Ohio proposes to revise subparagraph (F)(4)(c) by allowing as a nonaugmentative practice the replanting of trees on areas where the approved planting plan requires woody revegetation. On February 21, 1989, the Director approved the replanting of trees and shrubs as a nonaugmentative practice in Ohio (54 FR 7408). He, therefore, finds that proposed subparagraph (F)(4)(c) is no less effective than 30 CFR 816.116(c)(4) based upon Ohio's previous submission of supporting documentation.

Ohio proposes to add subparagraph (F)(4)(d) which will allow the reseeding of legumes within three years after the initial planting where the legumes are expected to be present five years after the initial planting. Ohio explained that red clover, a legume that is an important component of seed mixtures in Ohio, is a short-lived perennial which behaves as a biennial. It must be reseeded where it is used for forage production. Documentation was submitted by Ohio to support the proposal that reseeding of legumes is a normal husbandry practice (Administrative Record No. OH–1888). The Director, therefore, finds that proposed subparagraph (F)(4)(d) is no less effective than 30 CFR 816.116(c)(4).

Ohio proposes, as part of Revised Program Amendment No. 61R, to add three additional subparagraphs. Proposed subparagraph (F)(5) allows, as a nonaugmentative practice, the reseeding of areas that have been unavoidably disturbed after initial seeding because of repairs due to land movement or third-party interference. The existence of established permanent vegetation prior to the disturbance must be documented and the total acreage of areas reseeded during the initial liability period during any one year shall not exceed ten percent of the total affected acreage with no single area exceeding three acres. Proposed subparagraph (F)(6) allows, as a nonaugmentative practice, the reseeding of areas that have been unavoidably disturbed in the course of gaining access for removal of structures that are part of the sediment control system or for initial seeding of areas upon which the sediment control system was located and subsequently removed. Proposed subparagraph (F)(7) requires that permanent vegetation, that is established or reestablished under subparagraphs (F)(5) and (F)(6), must have been seeded a minimum of 12 months prior to the request for Phase III bond release.

In the past, OSM has either disapproved or taken no action on proposed State program amendment provisions that would have specified that areas reclaimed following the removal of siltation structures and associated diversions are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. OSM has also previously disapproved proposed State program amendment provisions that would relieve permittees from liability for third-party disturbances. In response to State program amendments recently proposed by Illinois, Kentucky, and Oklahoma and to concerns raised by other parties, OSM is reconsidering its position on these issues. In a separate **Federal Register** notice, OSM is requesting public comment on how SMCRA and the Federal rules should be interpreted. Accordingly, the Director has decided to defer making a finding on proposed OAC 1501:13–9–15(F)(5), (6), and (7) so that Ohio's proposal may be considered with similar proposals from these other States. The Director will announce his final decision on OAC 1501:13–9–15(F)(5), and (6), and (7) in a forthcoming **Federal Register** notice that will address all of the issues raised by Ohio and other States.

IV. Summary and Disposition of Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Department of Agriculture, Soil Conservation Service; U.S. Department of Labor, Mine Safety and Health Administration; U.S.

Army Corps of Engineers; and the Ohio Historic Preservation Office responded without substantive comment.

The National Coal Association (NCA) and the Ohio Mining and Reclamation Association (OMRA) responded to OSM's invitation for public comment. Both associations commented on proposed OAC 1501:13–9–15(F)(6) which pertains to the seeding of areas where sediment control systems were located. The Director is deferring his decision on this proposed change to OAC and will respond to the comments from NCA and OMRA in the forthcoming **Federal Register** notice announcing his final decision on this issue. No other comments were received from the public and no public hearing was requested or held.

V. Director's Decision

Based on the above findings, the Director is approving, with a deferral, Revised Program Amendment Number 61R, as submitted by Ohio on February 11 and June 11, 1993. The Director has determined that the amendment, which revises OAC 1501:13–9–15(F), is consistent with SMCRA and no less effective than the Federal rules. He is deferring his decision on proposed OAC 1501:13–9–15(F) (5), (6), and (7). The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary. However, by letter dated March 26, 1993, (Administrative Record No. OH–1855), EPA submitted its concurrence without comment.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Ohio program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of such provisions.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 9, 1993.

Carl C. Close, Assistant Director,

Eastern Support Center.

For the reasons set out in the preamble, title 30 chapter VII, subchapter T of the Code of Federal regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (ooo) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ooo) The following amendment to the Ohio regulatory program, as submitted to OSM on February 11, 1993, and June 11, 1993, is approved with a deferral, effective August 16, 1993 in the **Federal Register:** The approved amendment consists of revisions to the Ohio Administration Code (OAC) at Section 1501:13–9–15 which pertain to nonaugmentative practices. OSM is deferring a decision on proposed changes to OAC 1501:13–9–15(F)(5), (6), and (7) which concern the revegetation of areas where a sediment control system was located and the reseeding of

areas disturbed by land movement and third-party interference.

[FR Doc. 93–19650 Filed 8–13–93; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–93–015]

Drawbridge Operation Regulations; Teche Bayou, LA

AGENCY: Coast Guard, DOT.
ACTION: Final rule; revocation.

SUMMARY: This amendment removes the regulation for the State Route 351 swing span bridge across Bayou Teche, mile 87.5, at Ruth, St. Martin Parish, Louisiana because a fixed span replacement bridge has been constructed and the swing span bridge has been removed. Notice and public procedure have been omitted from this action because the swing span bridge is no longer in existence.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

DRAFTING INFORMATION: The drafters of this amendment are Mr. John Wachter, project officer, and CDR D.G. Dickman, project attorney.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes a regulation that is now meaningless because it pertains to a drawspan that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Federalism

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.501 is amended by revising paragraph (c) to read as follows:

§ 117.501 Teche Bayou.

* * * * *

(c) The draws of the S31 bridge, mile 90.5, at Breaux Bridge, and the Southern Pacific railroad bridge, mile 91.0, at Breaux Bridge, shall open on signal if at least 48 hours notice is given.

* * * * *

Dated: August 3, 1993.

J.C. Card,
Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 93–19715 Filed 8–13–93; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 165

RIN 2115–AA97

[COTP Pittsburgh Regulation 93–007]

Safety Zone Regulations; Ohio River, From Mile 88.0 to Mile 90.0

AGENCY: Coast Guard, DOT.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River from mile 88.0 to mile 90.0. This regulation is needed to control vessel traffic in the regulated area during the demolition of a bridge at mile 89.0. The regulation will restrict general navigation in the regulated area during demolition and clearing operations for the safety of vessels transiting the area.

EFFECTIVE DATE: This regulation is effective at 8 a.m. on August 17, 1993 and will terminate at 8 p.m. on September 3, 1993.

FOR FURTHER INFORMATION CONTACT: LT John Meehan, Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, a bridge is being removed from the navigable waterway. Bridge removal operations pose inherent risks to the waterway because the structure is progressively weakened as the operation proceeds. Once commenced, such operations should be completed as quickly as possible. Removal operations in this case have proceeded ahead of schedule, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue regulations without waiting for a comment period, as immediate implementation of navigation restrictions is needed to ensure the safety of vessels and to minimize the time a bridge in a weakened condition remains over the waterway.

Background and Purpose

The Wheeling Terminal Railroad Bridge located at mile 89.0 on the Ohio River is no longer an active bridge and must be removed. The bridge consists of several spans, with the main span directly over the navigable waterway. In order to remove these spans, the bridge will be demolished with explosives. The explosions will create an obvious hazard to vessels transiting the area. This demolition will occur in stages with various spans being removed one at a time. The main span will be demolished on August 17, 1993. After the explosives on this span are detonated, the steel and other debris from the bridge will fall into the sailing line of the Ohio River creating an unsafe condition for vessels. The contractor will immediately commence clearing operations, but it will require 24 hours to restore the channel to navigability. Accordingly, during that period, no traffic will be permitted in the safety zone as it would be unsafe for vessels attempting the transit. In addition, such transits would interfere with and delay the clearing operations. For the remaining period that this safety zone is in effect, the Captain of the Port will disseminate information as to when traffic may proceed without restriction through Broadcast Notice to Mariners and other means. Traffic will be permitted to proceed without restriction except during the actual demolition of the other spans. These restrictions will

last approximately 4 hours each. The other spans of the bridge are scheduled to be demolished on August 20, 1993, August 26, 1993, and September 2, 1993. These spans are not over the sailing line.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the relatively short duration of actual traffic restrictions (one 24 hour period and three additional four hour periods) and the relatively small size of the area regulated.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation under section 2.B.2.c. of Commandant Instruction M16475.1B.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T0262 is added, to read as follows:

§ 165.T0262 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 88.0 and mile 90.0 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective at 8 a.m. on August 17, 1993 and will terminate at 8 p.m. on September 3, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zone without Authority of the Captain of the Port apply.

(d) The Captain of the Port, Pittsburgh, Pennsylvania will announce periods of demolition operations and authorize entry into the safety zone when conditions permit by Marine Safety Information Radio Broadcast (Broadcast Notice to Mariners) on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Operations Office, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808 for current information.

Dated: July 16, 1993.

M.W. Brown,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh, Pennsylvania.

[FR Doc. 93–19716 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 698

RIN 1840–AB60

Campus Sexual Offenses Education and Prevention Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary promulgates regulations for the Campus Sexual Offenses Education and Prevention Program recently enacted in the Higher Education Amendments of 1992 (1992 Amendments). The program, if funded, would provide grants to institutions of higher education (IHEs) and consortia of IHEs to carry out sexual offenses education and prevention programs. The final regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds under this program.

The program has not received funding in fiscal year 1993. If the program receives funding, the Secretary will invite applications in a Federal Register notice.

The Secretary does not normally publish regulations for an unfunded program. The Secretary is publishing these regulations at this time, however, because of a statutory deadline that applied to the publication of proposed regulations for this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments, with the exception of §§ 698.2, 698.11, 698.21, 698.22, 698.24, and 698.30. Sections 698.2, 698.11, 698.21, 698.22, 698.24, and 698.30 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: H. Reed Saunders. Telephone: (202) 708–8922. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These final regulations implement the Campus Sexual Offenses Education and Prevention Program enacted in section 1541 of the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992. The program, if funded, would provide grants to IHEs and consortia of IHEs to carry out sexual offenses education and prevention programs.

The Campus Sexual Offenses Education and Prevention Program addresses National Education Goal 6, that every school—including IHEs—will offer a safe and disciplined environment conducive to learning. The program reflects the objectives of Goal 5 by educating college personnel and college students on how to prevent sexual offenses. The program also is designed to educate college students on how to report and prosecute perpetrators of sexual offenses and seek counseling if they have been the victims of a sexual offense.

On April 8, 1993, the Secretary published a notice of proposed rulemaking for this program in the Federal Register (58 FR 18308). In this notice, the Secretary solicited public comment on the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, two parties submitted comments on the proposed

regulations. An analysis of the comments follows.

Comment: One commenter suggested that institutions that receive a grant under this program make distinctions in their written codes of conduct between different types of criminal and non-criminal sexual behavior and the penalties and prosecutorial processes that may apply to this behavior. This commenter believes this information would be useful in educating students and faculty on the types of sexual behavior that are prohibited and the consequences of engaging in different forms of criminal and non-criminal sexual behavior.

Discussion: Section 698.3(a)(4) of the regulations provides that a General Sexual Offense Prevention and Education Grant may support creating, disseminating, or otherwise providing assistance and information about victims' options, on and off campus, to bring disciplinary or other legal action against perpetrators of sexual offenses. The term "sexual offense" is defined to include any sexually related civil or criminal offenses recognized under State law, conduct that would constitute sexual harassment under either Title VII of the Civil Rights Act of 1964 or Title IX of the Education Amendments of 1972), and any criminal offense recognized under Federal law. The Secretary interprets § 698.3(a)(4) of the regulations to permit an institution to create and disseminate educational information in its written code of conduct concerning the various forms of sexual behavior that would be considered a sexual offense under the regulations, and the penalties and prosecutorial processes that may apply to these offenses.

Changes: None.

Comment: Another commenter suggested that program priority be given to preventive education for perpetrators of sexual offenses. This commenter believes that the proposed regulations placed too much emphasis on the punishment of sexual offenses and not enough emphasis on assisting perpetrators of sexual offenses to refrain from engaging in future criminal and non-criminal sexual behavior.

Discussion: Section 698.3(a)(5) of the regulations provides that General Sexual Offense Prevention and Education Grants may support implementing, operating, or improving sexual offense education and prevention programs, including programs making use of peer-to-peer education. The Secretary believes that education and prevention programs may be targeted towards assisting the perpetrators of sexual offenses to refrain from committing future sexual offenses. The Secretary has the authority under § 698.24 of the regulations to establish these activities for priority and will consider doing so should this program receive funding.

Changes: None.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

Sections 698.2, 698.11, 698.21, 698.22, 698.24, and 698.30 contain information collection requirements. If this program receives funding, the Secretary will submit information to fulfill these requirements to the Office of Management and Budget, under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), at a later date.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 698

College and universities, Grant program-education, Reporting and recordkeeping requirements, Sexual offenses, Sexual crimes.

Dated: August 6, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number has not been assigned.)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new part 698 to read as follows:

PART 698—CAMPUS SEXUAL OFFENSES EDUCATION AND PREVENTION PROGRAM

Subpart A—General

Sec.

698.1 What is the Campus Sexual Offenses Education and Prevention Program?
698.2 Who is eligible for a grant?
698.3 What activities does the Secretary fund?
698.4 What regulations apply?
698.5 What definitions apply?

Subpart B—How Does One Apply for a Grant?

698.10 How does an applicant apply for a grant?
698.11 What must an application for a Campus Sexual Offenses Education and Prevention Program grant contain?

Subpart C—How Does the Secretary Make an Award?

698.20 How does the Secretary evaluate an application for a Campus Sexual Offenses Education and Prevention Program grant?
698.21 What selection criteria apply to General Sexual Offense Prevention and Education Grants?
698.22 What selection criteria apply to Model Grants?
698.23 What additional factors does the Secretary consider?
698.24 What priorities does the Secretary establish?

Subpart D—What Conditions Must Be Met After an Award?

698.30 Must a grantee file an annual performance report?

Authority: 20 U.S.C. 1145h, unless otherwise noted.

Subpart A—General

§ 698.1 What is the Campus Sexual Offenses Education and Prevention Program?

(a) Under the Campus Sexual Offenses Education and Prevention Program, the Secretary provides grants to institutions of higher education (IHEs) or consortia of IHEs to carry out sexual offenses education and prevention programs.

(b) Under the program, the Secretary awards two types of grants:

(1) General Sexual Offense Prevention and Education Grants as described in § 698.3(a).

(2) Model Grants as described in § 698.3(b).

(Authority: 20 U.S.C. 1145h)

§ 698.2 Who is eligible for a grant?

(a) An IHE or a consortium of IHEs that satisfies the eligibility requirements of paragraph (b) of this section is eligible for a grant under the Campus Sexual Offenses Education and Prevention Program.

(b) To be eligible for a grant under this program, an IHE or each IHE within a consortium of IHEs must—

(1) Have a student code of conduct, or other written policy governing student behavior, that explicitly prohibits all forms of sexual offenses; and

(2) Have a written policy, in effect and implemented, requiring the disclosure to the victim of any sexual offense of the outcome of any investigation by campus police or campus disciplinary proceedings brought as a result of the victim's complaint against the alleged perpetrator of the sexual offense. However, this paragraph does not authorize disclosure to any person other than the victim.

(Authority: 20 U.S.C. 1145h)

§ 698.3 What activities does the Secretary fund?

(a) The Secretary awards General Sexual Offense Prevention and Education Grants for the following activities:

(1) Providing training for campus security and college personnel, including campus disciplinary or judicial boards, that addresses the issues of sexual offenses.

(2) Developing, disseminating, or implementing campus security and student disciplinary policies to prevent and discipline the perpetrators of sexual offense crimes.

(3) Developing, enlarging, or strengthening support services programs that include medical or psychological counseling to assist victims of sexual offense crimes in their recovery.

(4) Creating, disseminating, or otherwise providing assistance and information about victims' options, on and off campus, to bring disciplinary or other legal action against perpetrators of sexual offenses.

(5) Implementing, operating, or improving sexual offense education and prevention programs, including programs making use of peer-to-peer education.

(b)(1) The Secretary awards Model Grants for model demonstration programs that will be coordinated with local rape crisis centers for developing and implementing—

(i) Quality rape-prevention and education curricula; and

(ii) Local programs to provide services to student sexual offense victims.

(2) The Secretary awards not less than 25 percent of the funds appropriated under this part in any fiscal year for the Model Grants described in paragraph (b)(1) of this section.

(c) The Secretary does not make grants for activities that are necessary to meet the minimum requirements of the Crime Awareness and Campus Security Act of 1990, Public Law 101–542.

(Authority: 20 U.S.C. 1145h)

§ 698.4 What regulations apply?

The following regulations apply to the Campus Sexual Offenses Education and Prevention Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 698.

(Authority: 20 U.S.C. 1145h)

§ 698.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
EDGAR
Facilities
Fiscal year
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Consortium means two or more institutions of higher education that jointly submit an application for a grant under the Campus Sexual Offenses Education and Prevention Program.

Institution of higher education (IHE) means an institution that satisfies the definition of that term in section 1201(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1141(a)).

Sexual offense means—

(i) A sexually related civil or criminal offense recognized under State law;

(ii) Conduct that would constitute sexual harassment under either Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) or Title IX of the Education Amendments of 1972 (20 U.S.C. 1681); or

(iii) A sexually related crime recognized under Title 18 of the U.S. Code.

Sexual offense crime means—

(i) A sexually related crime recognized under State law; or

(ii) A sexually related crime recognized under Title 18 of the U.S. Code.

Sexual offenses education and prevention includes programs that provide education seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, prepare informational materials, and any other effort to increase campus awareness of the facts about, or help prevent, sexual offenses.

(Authority: 20 U.S.C. 1145h)

Subpart B—How Does One Apply for a Grant?

§ 698.10 How does an applicant apply for a grant?

An IHE or consortium of IHEs shall submit an application to the Secretary at such time and in such a manner as the Secretary prescribes.

(Authority: 20 U.S.C. 1145h)

§ 698.11 What must an application for a Campus Sexual Offenses Education and Prevention Program grant contain?

An application for a Campus Sexual Offenses Education and Prevention Program grant must—

(a) Include the activities and programs to be carried out with the funds awarded;

(b) Estimate the cost for establishing and operating those activities and programs;

(c) Explain how the activities and programs intend to address the issue of sexual offenses;

(d) Provide assurances that the Federal funds made available under this program will be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of those Federal funds, be made available by the applicant for the purposes described in this part and, in no case, to supplant those funds; and

(e) Include other information and assurances as the Secretary reasonably determines to be necessary.

(Authority: 20 U.S.C. 1145h)

Subpart C—How Does the Secretary Make an Award?

§ 698.20 How does the Secretary evaluate an application for a Campus Sexual Offenses Education and Prevention Program grant?

(a)(1) The Secretary evaluates an application for a General Sexual Offense Prevention and Education Grant on the basis of the selection criteria in § 698.21.

(2) The Secretary evaluates an application for a Model Grant on the basis of the selection criteria in § 698.22.

(3) The Secretary awards up to 100 points for these criteria.

(4) The maximum possible points for each criterion is indicated in parentheses.

(b) The Secretary awards up to 15 additional points to applicants who satisfy the priorities in § 698.24(b).

(Authority: 20 U.S.C. 1145h)

§ 698.21 What selection criteria apply to General Sexual Offense Prevention and Education Grants?

The Secretary uses the following criteria to evaluate an application for a General Sexual Offense Prevention and Education Grant:

(a) *Meeting the purposes of the authorizing statute.* (10 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute authorizing the program, including consideration of—

(1) The objectives of the project; and

(2) How the activities to be funded under a General Sexual Offense Prevention and Education Grant further the objectives of the project.

(b) *Extent of need for the project.* (12 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Campus Sexual Offenses Education and Prevention Program, including consideration of—

(1) The needs addressed by the project (3 points);

(2) How the applicant identified those needs (3 points);

(3) How those needs will be met by the project (3 points); and

(4) The benefits to be gained by meeting those needs (3 points).

(c) *Plan of operation.* (32 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project (20 points);

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable; and

(iv) For a multi-year project, include specific objectives to be met during each annual budget period that can be used to determine the progress of the project toward meeting its intended outcomes (3 points);

(3) The extent to which the plan of management ensures proper and efficient administration of the project (3 points);

(4) The ability of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the project period (3 points); and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition (3 points).

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) In determining the qualifications of key personnel under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (6 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Extent of impact.* (10 points) The Secretary reviews each application to determine the potential impact of the proposed project. This review includes an examination of both the actual number and percentage of individuals who would be affected by the project.

(i) *Continuation of project.* (5 points) The Secretary reviews each application to determine the extent to which the applicant's plans demonstrate a commitment to continue the project after Federal financial assistance is terminated. The review will include an examination of the support for, and the amount of funds, personnel, and other resources committed to the continuation of the project after Federal financial assistance is terminated.

(Authority: 20 U.S.C. 1145h)

§ 698.22 What selection criteria apply to Model Grants?

The Secretary uses the following criteria to evaluate an application for a Model Grant:

(a) *Meeting the purpose of the authorizing statute.* (12 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute authorizing the program, including consideration of—

(1) The objectives of the project; and

(2) How the activities to be funded under a Model Grant further the objectives of the project; and

(3) The extent to which the project would contribute significantly to strengthening, expanding, or improving sexual offense education and prevention programs in IHEs throughout the nation.

(b) *Plan of operation.* (30 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project (15 points);

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable; and

(iv) For a multi-year project, include specific objectives to be met during each annual budget period that can be used to determine the progress of the project toward meeting its intended outcomes (3 points);

(3) The extent to which the plan of management ensures proper and efficient administration of the project (3 points);

(4) The ability of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the project period (3 points);

(5) How the applicant will ensure that project participants who otherwise are eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition (3 points); and

(6) The adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies (3 points).

(c) *Coordination with a local rape crisis center.* (6 points) The Secretary reviews each application for information that shows the extent to which the project is coordinated with a local rape crisis center, as demonstrated by the center's involvement in—

(1) Identifying the needs to be served by the project;

(2) Developing the application; and

(3) Operating the project.

(d) *Quality of key personnel.* (8 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (d)(1) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) In determining the qualifications of key personnel under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (6 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable.

(g) *Extent of impact.* (8 points) The Secretary reviews each application to determine the potential impact of the project. This review includes an examination of both the actual number and percentage of individuals who would be affected by the project.

(h) *Continuation of project.* (5 points) The Secretary reviews each application to determine the extent to which the applicant's plans demonstrate a commitment to continue the project after Federal financial assistance is terminated. The review will include an examination of the support for and the amount of funds, personnel, and other resources committed to the continuation of the project after Federal financial assistance is terminated.

(i) *Dissemination.* (15 points) The Secretary reviews each application to determine the extent to which the applicant has—

(1) An effective and efficient plan for disseminating information about the project, including the results of the project and any specialized materials developed by the project, at the local, State, or national level, as appropriate;

(2) A high quality design for the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(3) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(4) The capacity to demonstrate the methods and techniques used by the project; and

(5) The capacity to assist others to adopt and successfully implement the project or methods and techniques used by the project.

(Authority: 20 U.S.C. 1145h)

§ 698.23 What additional factors does the Secretary consider?

In addition to the criteria in §§ 698.21 and 698.22, the Secretary, to the extent possible, makes awards that ensure the following conditions:

(a) Equitable participation of private and public IHEs.

(b) Equitable geographic participation of IHEs.

(Authority: 20 U.S.C. 1145h)

§ 698.24 What priorities does the Secretary establish?

(a)(1) Each year, the Secretary may establish as an absolute priority one or more of the activities listed in § 698.3(a) and (b)(1).

(2) The Secretary announces these priorities in a notice published in the **Federal Register**.

(b) The Secretary may award up to 15 additional points to applicants who—

(1) Show the greatest need for the sums requested as determined by—

(i) The adequacy of the applicant's financial resources to implement a campus education program regarding sexual offenses (0 to 5 points); or

(ii) The nature and frequency of sexual offenses on an applicant's campus (0 to 5 points); or

(2) Do not have an established campus education program regarding sexual offenses on campus (5 points).

(c) Each year, the Secretary notifies prospective applicants through a notice in the **Federal Register** of the basis on which the priority points in paragraph (b)(1)(i) and (ii) of this section will be allocated.

(Authority: 20 U.S.C. 1145h)

Subpart D—What Conditions Must Be Met After an Award?

§ 698.30 Must a grantee file an annual performance report?

(a) Each grantee shall, in accordance with 34 CFR 74.82, file an annual performance report with the Secretary explaining the activities carried out under its project together with an assessment of the effectiveness of those activities in achieving the purposes of the Campus Sexual Offenses Education and Prevention Program.

(b) The Secretary suspends funding if an applicant fails to submit an annual performance report pursuant to paragraph (a) of this section.

(Authority: 20 U.S.C. 1145h, 1221e–3(a)(1) and 3474; OMB Circular A–110, 34 CFR part 74)

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–71

Property Management Regulation; Uniform Administrative Requirements for Grants and Cooperative Agreements With State and Local Governments

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This action adopts common regulations establishing consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: John P. Dyer, General Services Administration, Public Buildings Service, Office of Procurement, 18th and F Streets, NW., room 7316, Washington, DC 20405. Telephone: (202) 501–0907 Extension 46.

SUPPLEMENTARY INFORMATION: With this final rule, the General Services Administration adopts rules and regulations governing the administration and use of grants and cooperative agreements with State and local governments. This final rule establishes consistency and uniformity with other Federal agencies in the employment and management of grants and cooperative agreements with State, local and federally recognized Indian tribal governments. There are no deviations or differences between the model regulation promulgated by the Office of Management and Budget, which forms the basis for the March 11, 1988 "common" rule, and these General Services Administration regulations governing the same.

The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

Editorial Note: For additional information, see related documents published at 49 FR 24958. June 18, 1984, 52 FR 20178, May 29, 1987, and 53 FR 8028, March 11, 1988.

List of Subjects in 41 CFR Part 41 CFR 105–71

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

41 CFR Ch. 105 is amended to add Part 105–71 to read as follows:

PART 105–71—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS WITH STATE AND LOCAL GOVERNMENTS

Subpart 105–71.1—General

Sec.

105–71.100 Purpose and scope of this part.
105–71.101 Scope of §§ 105–71.100 through 105–71.105.
105–71.102 Definitions.
105–71.103 Applicability.
105–71.104 Effect on other issuances.
105–71.105 Additions and exceptions.

Subpart 105–71.11—Pre-Award Requirements

105–71.110 Forms for applying for grants.
105–71.111 State plans.
105–71.112 Special grant or subgrant conditions for "high-risk" grantees.

Subpart 105–71.12—Post-Award Requirements/Financial Administration

105–71.120 Standards for financial management systems.
105–71.121 Payment.
105–71.122 Allowable costs.
105–71.123 Period of availability of funds.
105–71.124 Matching or cost sharing.
105–71.125 Program income.
105–71.126 Non-Federal audit.

Subpart 105–71.13—Post-Award Requirements/Changes, Property, and Subawards

105–71.130 Changes.
105–71.131 Real property.
105–71.132 Equipment.
105–71.133 Supplies.
105–71.134 Copyrights.
105–71.135 Subawards to debarred and suspended parties.
105–71.136 Procurement.
105–71.137 Subgrants.

Subpart 105–71.14—Post-Award Requirements/Reports, Records, Retention, and Enforcement

105–71.140 Monitoring and reporting program performance.
105–71.141 Financial reporting.
105–71.142 Retention and access requirements for records.
105–71.143 Enforcement.
105–71.144 Termination for convenience.

Subpart 105–71.15—After-the-Grant Requirements

105–71.150 Closeout.
105–71.151 Later disallowances and adjustments.
105–71.152 Collection of amounts due.

Subpart 105–71.16—Entitlements [Reserved]

Authority: Sec. 205(c), 63 Stat. 390, (40 U.S.C. 486(c)).

Subpart 105–71.1—General

§ 105–71.100 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 105–71.101 Scope of §§ 105–71.100 through 105–71.105.

This section contains general rules pertaining to this part and procedures for control of exceptions from this subpart.

§ 105–71.102 Definitions.

As used in this part: *Accrued expenditures* mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash constributions.

Contract means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For non-construction grants, the SF–269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF–271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of the third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than equipment as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O.

12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee.

Termination does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 105–71.103 Applicability.

(a) *General.* Sections 105–71.100 through 105–71.152 of this subpart apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 105–71.105 or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medical Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act);

(ii) Commodity Assistance (section 6 of the Act);

(iii) Special Meal Assistance (section 11 of the Act);

(iv) Summer Food Service for Children (section 13 of the Act); and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) . (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 105–71.103(a)(3) through (8) are subject to Subpart—Entitlement.

§ 105–71.104 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 105–71.105.

§ 105–71.105 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the **Federal Register**.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart 105–71.11—Pre-Award Requirements

§ 105–71.110 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants

for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 105–71.111 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 105–71.112 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible, and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart 105–71.12—Post-Award Requirements/Financial Administration

§ 105–71.120 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial result of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability and allocability of costs.

(6) *Source documentation.* Accounting records must be supported

by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 105–71.121 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital the awarding agency may provide cash or a working capital, advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award conditions, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 105–71.143(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 105–71.122 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles:

For the costs of a—	Use the principles in—
State, local or Indian tribal government..	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122.

For the costs of a—	Use the principles in—
Educational institutions.	OMB Circular A–21
For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular.	48 CFR part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 105–71.123 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover or unobligated balances are permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ 105–71.124 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements apply.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 105–71.125, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 105–71.125(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect cost. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of contributions.

(iii) A third party in-kind contribution to a fixed price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and the title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is

to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply.

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 105–71.122, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in the building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 105–71.125 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Government revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 105–71.134.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of § 105–71.131 and § 105–71.132.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 105–71.126 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501–7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private for profit and private and

governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure the appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 105–71.136 shall be followed.

Subpart 105–71.13—Post-Award Requirements/Changes, Property, and Subawards

§105–71.130 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 105–71.122) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*— (1) *Non-construction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a non-construction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and non-construction projects.* When a grant or subgrant provides funding for both construction and non-construction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from non-construction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under non-construction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 105–71.136 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accomplished by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 105–71.122) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§105–71.131 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives.

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from the sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall

be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 105–71.132 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 105–71.125(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds the title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the data of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 105–71.132(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 105–71.133 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 105–71.134 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 105–71.135 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award

(subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension".

§105–71.136 Procurement.

(a) *States.* When procuring property and services under a grant, a State will allow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agent will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protests to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 105–71.136. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or

administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 105–71.136(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of the price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for preaward review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 105–71.122). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the preaward review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penaltites as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR part 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audits, examinations, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

§ 105–71.137 Subgrants.

(a) *States.* States shall follow State law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 105–71.142 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 105–71.110;

(2) Section 105–71.111;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 105–71.121; and

(4) Section 105–71.150.

Subpart 105–71.14—Post-Award Requirements/Reports, Records, Retention, and Enforcement

§ 105–71.140 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Non-construction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semiannual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semiannual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may exend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§105–71.141 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decision making purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date on any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all non-construction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter of credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272A, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriated when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 105–71.141(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 105–71.141(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 105–71.141(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 105–71.141(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 105–71.141(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 105–71.141(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 105–71.141(b)(2).

§ 105–71.142 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees of subgrantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 105–71.136(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rates at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computations are not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records. Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 105–71.143 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporary withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Without further awards for the program, or

(5) Take other remedies that may be legally available,

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in case of a termination, are noncancellable, and,

(2) The cost would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §105–71.135).

§105–71.144 Termination for convenience.

Except as provided in § 105–71.143 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 105–71.143 or paragraph (a) of this section.

Subpart 105–71.15—After-The-Grant Requirements

§105–71.150 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable).

(3) Final request for payment (SF–270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report: In accordance with § 105–71.132(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§105–71.151 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 105–71.142;

(d) Property management requirements in § 105–71.131 and § 105–71.132; and

(e) Audit requirements in § 105–71.126.

§105–71.152 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursement,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch.II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart 105–71.16—Entitlements [Reserved]

Dated: July 13, 1993.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 93–19572 Filed 8–13–93; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF DEFENSE

48 CFR Parts 249 and 252

Defense Federal Acquisition Regulation Supplement; Notification of Proposed Program Termination or Reduction

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement to establish a contractor notification requirement in the event of a potential termination or substantial reduction in a defense program.

DATES: *Effective Date:* August 9, 1993.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on

or before September 15, 1993, to be considered in the formulation of the final rule. Please cite DFARS Case 92–D363 in all correspondence.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric Mens, OUSD(A)DP, IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4471 of the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102–484), requires the Secretary of Defense to determine which defense programs are likely to be terminated or substantially reduced as a result of the submission of the President's budget or enactment of an appropriations act, within 30 days of such submission or enactment; provide notice of the proposed termination or substantial reduction to each contractor and subcontractor that has a contract of $500,000 or more under a program which will be adversely affected by the termination of, or substantial reduction in, such program; and withdraw the notice initially provided if an appropriations act subsequently restores sufficient funding. Section 4471 also requires that contractors, not later than two weeks after receiving the Government's notice of a potential termination or reduction in a program, provide similar notice to each employee or employee representative, as well as to certain public officials. The notices are intended to help employees of adversely affected contractors and subcontractors to receive benefits under the Job Training Partnership Act (29 U.S.C. 1661).

The interim rule amends DFARS 249 and 252 to establish the statutory notification requirements and set forth contractor responsibilities in a new clause 252.249–7002, Notification of Proposed Program Termination or Reduction. The clause identifies the statutorily-defined recipients of the contractor's notice and requires the contractor to also provide notice to affected subcontractors.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies but the magnitude of the expected impact on small entities as a result of the rule is unknown and impossible to estimate. An Initial Regulatory Flexibility Analysis (IRFA) has been performed and a copy has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. The IRFA states that it is impossible to accurately estimate the number of small business that may be impacted because it is impossible to estimate the number of small entities who currently hold, or prospectively will hold, defense contracts or subcontracts of $500,000 or more and who may be adversely impacted when such contracts or subcontracts are modified or terminated as a result of cutbacks or terminations of the programs which those contracts or subcontracts support. A copy of the IRFA may be obtained from Mr. Eric Mens, telephone number (703) 697–7266. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 610 (DFARS Case 92–D363) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the interim rule does not constitute a "collection of information" requiring the approval of OMB under 44 U.S.C. 3501 *et seq.* The notices required by the rule do not constitute a "collection of information" under the Paperwork Reduction Act, as the term is defined in 5 CFR 1320.7(c)(2). Paragraph (c)(2) states that the public disclosure of information originally supplied by the Government to the recipient for purposes of disclosure to the public does not fit into the definition of a "collection of information."

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. The first DoD notifications to contractors were required to be made by May 8, 1993. The second set of notices should be released to contractors 30 days after enactment of the DoD Appropriations Act which is expected to be enacted in October 1993. Therefore, it is essential that guidance be issued as expeditiously as possible.

List of Subjects in 48 CFR Parts 249 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition, Regulations Council.

Therefore, 48 CFR parts 249 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 249 and 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and FAR Subpart 1.3.

PART 249—TERMINATION OF CONTRACTS

2. Section 249.7003 is added to read as follows:

§ 249.7003 Notification of proposed program termination or reduction.

(a) Section 4471 of Public Law 102–484 is intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661) for employees of DoD contractors and subcontractors adversely affected by program terminations or substantial reductions.

(b) Each military department or defense agency is responsible for establishing procedures to:

(1) Determine which defense programs are likely to be terminated or substantially reduced as a result of the submission of the President's budget or enactment of an appropriations act.

(2) Within 30 days of such submission or enactment, provide notice, substantially as follows, of the proposed termination or reduction to each contractor that has a contract of $500,000 or more under a program identified as likely to be terminated or reduced by at least 25 percent.

"In accordance with section 4471 of Public Law 102–484, you are hereby notified that the (insert program name) has been (contracting officer to insert either (1) or (2) below)—

(1) Identified as likely to be (insert "terminated" or "substantially reduced") by the Fiscal Year (insert fiscal year) President's budget; or

(2) (insert "terminated" or "substantially reduced") by the Fiscal Year (insert fiscal year) "Defense Appropriations Act").

Your responsibilities upon receipt of this notice are set forth in the "Notification of Proposed Program Termination or Reduction" clause in your contract (insert contract number). This is not a notice of termination under the Termination for Convenience or Default clauses of your contract.

You will be notified in the event that appropriations are subsequently restored, at which time you must comply with the requirements of paragraph (c) of the "Notification of Proposed Program Termination or Reduction" clause."

(3) Withdraw the notice provided under Section 249.7003(b)(2) if an appropriations act subsequently restores sufficient funding.

(c) Use the clause at section 252.249–7002, Notification of Proposed Program Termination or Reduction, in all contracts of $500,000 or more.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.249–7002 is added to read as follows:

252.249–7002 Notification of proposed program termination or reduction.

As prescribed in section 249.7003(c), use the following clause:

Notification of Proposed Program Termination or Reduction (Aug. 1993)

(a) Within two weeks after the Government notifies the Contractor that this contract may be adversely affected by a program termination or reduction, the Contractor shall provide notice of such proposed termination or reduction to—

(1) Each representative of the Contractor's employees whose work is directly related to the contract; or

(2) If there is no such representative at that time, each such employee;

(3) The State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)) and the chief elected official of the unit of general local government within which the adverse effect may occur; and

(4) Each affected subcontractor.

(b) If the proposed program termination or reduction is likely to result in plant closure or mass layoff, the notice provided an employee under paragraph (a) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act. If the Contractor has specified that the proposed program termination or reduction is not likely to result in plant closure or mass layoff, the employee shall only be eligible to receive services under section 314(b) and paragraphs (1) through (14), (16), and (18) of section 314(c) of the Job Training Partnership Act.

(c) If the Government subsequently withdraws a notice issued in accordance with paragraph (a) of this clause, the Contractor, within two weeks after receipt of the withdrawal notice shall provide notice of the withdrawal to—

(1) The representatives, employees, offices, officials, and subcontractors specified in paragraph (a) of this clause; and

(2) Each grantee under section 325(a) or 325A(a) of the Job Training Partnership Act, as the case may be, providing training, adjustment assistance, and employment services to each employee described in this paragraph.

(d) An employee who receives notice of withdrawal shall not be eligible for training adjustment assistance, and employment services under section 325 of the Job Training Partnership Act, or section 325A of such Act, as the case may be, beginning on the date the employee receives such notice.

(e) The Contractor shall insert the substance of this clause in all subcontracts of $500,000 or more.

(End of clause)

[FR Doc. 93–19508 Filed 8–13–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 952 and 970

Acquisition Regulation; Facilities Management and Arbitration; Correction

AGENCY: Department of Energy (DOE).

ACTION: Correction of final regulations.

SUMMARY: This document contains corrections to the final rules which were published on June 30, 1993, at 58 FR 34924 and July 6, 1993, at 58 FR 36149. The regulations involve the facilities management and arbitration rules.

EFFECTIVE DATES: August 30, 1993, for the facility management rule (published on June 30, 1993) and August 5, 1993, for the arbitration rule (published on July 6, 1993).

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Office of Procurement and Assistance Management (PR–121), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8247.

SUPPLEMENTARY INFORMATION:

Background

The corrections revise an erroneous cross reference, and insert missing dates on clause titles.

Correction of Publication

1. The regulation published June 30, 1993, at 58 FR 34924, is corrected as follows:

970.5204–60 [Corrected]

On page 34926, first column, the reference in paragraph (a) to DOE Directive "4300.1C" is changed to read "4320.1B."

2. The regulation published July 6, 1993, at 58 FR 36149, is corrected as follows:

952.237–70 [Corrected]

On page 36152, first column, the date beside the clause title is changed from "(XXX 1992)" to "(AUG 1993)".

970.5204–63 [Corrected]

On page 36152, second column, the date beside the clause title is changed from "(XXX 1992)" to "(AUG 1993)".

Issued in Washington, DC on August 10, 1993.

G.L. Allen,

Acting Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 93–19559 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket Number RSOR–11, Notice No. 3]

RIN 2130—AA77

Protection of Utility Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA regulations prescribe minimum requirements for certain railroad operating rules and practices, including blue signal protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment. Such activities may require employees to work on, under, or between such equipment and subject them to the danger of personal injury posed by any movement of such equipment. Train and yard crews are excluded from blue signal protection, unless assigned to perform such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. FRA is revising the exclusionary language to allow augmentation of a crew with a "utility" employee, and creating alternate safety procedures to prevent injury to these employees.

EFFECTIVE DATE: These rules will become effective 30 days after the date of publication.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, RCC–30, Federal Railroad Administration, Department of Transportation, 400 Seventh Street SW., room 8201, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James T. Schultz, Office of Safety, FRA, RRS–11, Washington, DC 20590 (telephone: 202–366–9252), or Kyle M. Mulhall, Office of Chief Counsel, FRA, Washington, DC 20590 (telephone: 202–366–0443).

SUPPLEMENTARY INFORMATION:

Background

The "blue signal" provisions of FRA's railroad operating practices regulation (49 CFR part 218, subpart B) were promulgated to prescribe minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment whose activities require them to work on, under, or between such equipment and subjects them to the danger of personal injury posed by any movement of such equipment. Examples of activities requiring blue signal protection include, but are not limited to, the following: Breaking or making steam and air hose connections (including connection by coupling irons), connecting or disconnecting electric control cables between equipment, replacing broken coach windows, making repairs beneath the car to blower motors or steam regulators, making electric pantograph inspections, repairing or replacing a rear end marker or telemetry device, and conducting initial terminal air brake tests when employees are required to go on, under, or between rolling equipment.

A person requiring blue signal protection is referred to as a "workman." 49 CFR 218.5(a). Train and yard crews are excluded from blue signal requirements except when assigned to perform such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. The rationale for this exclusion is that the crew, working with their assigned engineer in control of the locomotive, has complete control and can prevent the unanticipated movement of the equipment on which crew members are working.

Since promulgation of the regulation, the size of train and yard crews has been significantly reduced through the collective bargaining process and increased operating efficiencies. Implementation of the recommendations of Presidential Emergency Board No. 219 ("PEB 219") (see Pub. L. No. 102–29, 1991) is greatly accelerating this process of change. Through this and prior processes, crews that once consisted of a locomotive engineer, fireman, conductor, and two trainmen, have in many cases been reduced to a locomotive engineer and conductor only.

Role of the Utility Employee

Before and after the PEB 219 process, railroads have used utility employees to assist the train or yard crew on a temporary basis. A recent FRA investigation indicated that at least seven Class I railroads and three regional railroads are experimenting with the use of utility employees to supplement train and yard assignments. This practice has involved at least two hundred employees from the train service ranks at more than sixty-five locations. The following are examples of functions that are being performed by utility employees:

- Operating manual switches in yard or terminal areas or at industrial sidings and sending or receiving hand or radio communications with respect to such switching movements;
- Working with the regular train or yard crew to assemble trains from pre-tested and pre-inspected blocks of cars by preparing couplings between rail cars, coupling air hoses, and assisting switching movements;
- Participating in power brake inspections at initial terminals or intermediate terminals (49 CFR 232.12, 232.13);
- Participating in Freight Car Safety Standards inspections at initial terminals or elsewhere when cars are placed in a train (49 CFR 215.13); and
- Installing, testing, or replacing rear end marking devices (and/or telemetry devices) (see 49 CFR 221.16).

The blue signal regulations have, in the view of the railroads, constituted an impediment to the efficient use of these additional employees. The conflict between regulatory requirements and efficient utilization of personnel reached a critical level which prompted FRA to propose a new rule. In proposing this rule, FRA believed that there might be conditions under which train and yard crews could be temporarily augmented without a diminution of safety.

The Final Rule

The final rule defines the appropriate safeguards under which a utility employee may safely function as a "part of the train or yard movement" for a limited period. This rule is based on the premise that the utility employee should be able to work under essentially the same conditions as other yard or train crew members of the crew with which that employee is associated, provided appropriate communication is established and maintained. It remains essential that any employee who is not assigned to a train or yard crew, but who inspects, tests, repairs, or services rolling equipment and is on, under, or between that equipment, continues to be a "worker" requiring blue signal protection.

Current regulations require blue signal protection when workers other than train and engine crews are required to go on, under, or between moving equipment. It was determined that train and yard crews could safely perform their tasks without blue signal protection because the characteristics of their activity provide alternative protection for the crew members. They work as a team and maintain communication with each other. The engineer at the controls of the locomotive is aware of other crew members working on the train and can prevent movement of the equipment while any of the crew are in a danger zone. The engineer also is in contact with other trains in the vicinity and can prevent unexpected couplings while crew members are in jeopardy.

Under the present regulation, however, the train and yard crew exclusion does not extend to utility employees. Many railroads believed that the exclusion did cover utility employees working with train and yard crews. FRA evaluated the position of those railroads and disagreed. The utility employee is not covered in the exclusion principally because he or she is not called for a tour of duty as a member of the cohesive working unit, but joins the unit for a brief period and then leaves, or is left by the work unit when the joint activity is completed. In other words, the utility employee is not called to operate the railroad rolling equipment assigned to the cohesive work unit known as the train or yard crew. Utility employees are required to establish full blue signal protection prior to performing any work on, under, or between the equipment. To avoid that necessity, the railroad can instead assign a brakeman to a crew for an entire tour of duty, even though that person's services are only required for a small portion of the duty tour. These assignments, however, thwart railroad efforts to efficiently deploy personnel.

Where the utility employee is working independently of the crew, the requirement for full blue signal protection is justified, since that employee lacks those characteristics that afford alternative protection. However, when the utility employee actually becomes an integral part of the crew, even temporarily, it is difficult from a safety perspective to justify the different regulatory treatment of that employee from other crew members. FRA therefore published a notice of proposed rulemaking (NPRM) to allow utility employees to be excluded from blue signal protection when working as a member of a train or yard crew.

Response to the NPRM

Need for Regulatory Change

A number of commenters took issue with the need for this rule change. Railroad management took the position that the current rule does not preclude utility employees from taking advantage of the exclusion from blue signal protection. Representatives of rail labor objected, generally, that the rule expanded the exclusion at the cost of reduced safety for utility employees, and that the current blue signal rule does not provide adequate protection for train and yard crews.

As noted earlier, FRA disagrees with the railroads concerning the applicability of the current rule. Conversely, FRA believes that the current blue signal rule, in this aspect, is restrictive without benefiting safety. As it now exists, the rule unduly impedes the railroad industry's efforts to improve the efficiency of its operations. As to the concerns expressed by rail labor, FRA does not believe that according a utility employee the same level of protection historically provided to the train and yard crews constitutes a significant diminution of the utility employee's safety. As discussed below, FRA's accident data do not support the view that train crews are currently experiencing repeated injuries ascribable to unexpected train movement. Therefore, while there may be a theoretical cost to safety due to the absence of blue signal protection, FRA does not believe any real safety compromise will occur. Accordingly, FRA is amending the regulation to allow a utility employee to become a member of a train or yard crew (and thus entitled to the exclusion from blue signal requirements) under circumstances where safety will not be compromised.

The rule establishes the appropriate safeguards under which a utility employee may safely function as a "part of the train or yard movement" for a limited period. The rule is founded on the belief that the utility employee can work under the same conditions as the members of the yard or train crew to which the employee is assigned, provided appropriate communication is established and maintained. It remains essential that any employee who is not assigned to a train or yard crew, but who inspects, tests, repairs, or services rolling equipment and is on, under, or between that equipment, continues to be a "workman" (or "worker," as provided under the gender-neutral amendment that would be made by this proposal) requiring blue signal protection.

NPRM Restrictions

Several commenters from the railroad industry objected to the notice of proposed rulemaking because they believed the procedures for a utility employee to join a crew were too burdensome. The principal objection from both rail labor and rail management was designation of the locomotive engineer as the point of contact for the utility employee with the crew, which increased the burden of responsibility on the engineer. FRA response to this concern is contained below in the section-by-section analysis.

These commenters were also concerned that the communication requirements of the rule would add to radio congestion in major terminals. The reason for the blue signal exclusion for train and yard crews is that the very nature of their work requires a near constant communication with other crew members. As a result, crew members are kept so aware of each others activities that the notice provided by blue signals is redundant. This level of communication is essential to safety, and normally should not cause more communication than occurred when large train crews performed these tasks. FRA believes the resulting burden from these procedural requirements is minor when compared to the need to safeguard the level of communication necessary for the safety of the crew and the utility employee.

Safety Concerns

Some commenters urgently argued that unexpected movement of equipment due to the actions of other train crews could pose serious hazards for utility employees. If this is the case one would expect to find such injuries occurring today among regular brakemen and conductors working in the same environment. To examine this issue, FRA conducted a review of accident/incident records for the past five years concerning fatal and nonfatal injuries incurred by train and yard crews, including any utility employees, that could have resulted from faulty communication between working units (*i.e.*, caused by unexpected equipment movement). Potential incidents were identified from our data base, and then each incident was assigned to an FRA inspector for investigation. FRA was able to identify only two incidents of employees suffering injury as a result of other members of the injured employee's crew causing unexpected movement of the equipment they were called to operate. FRA was not able to identify any case that involved employee injury caused by another crew unexpectedly moving the equipment.

FRA also investigated a 1992 incident in which a brakeman was fatally injured during switching activities of another crew involved in assembling rail cars for his train. Evidence indicates that the brakeman was between rail cars during switching operations without adequate notice to the other crew. This unfortunate incident was avoidable had the brakeman communicated his intentions to the other crew, or fully understood the activities of the other crew.

Considering this information, and the anecdotal testimony provided by the commenters, FRA believes it is clear that a risk does exist if proper communication is not established and maintained between the train and yard crews and utility employees assisting those crews. FRA believes there is adequate justification in the record to propose future rulemaking to establish minimum safety standards for the protection of all train and yard crew members and utility employees from actions of other crews. FRA's review of the limited safety data available also serves to show, however, that there is no substantial injury record for utility employees when working with train or yard crews after establishing adequate communication and understanding of the work assignments, nor is there any crisis with respect to the much larger number of train and yard crew members who are potentially affected by the actions of other crews, such that utility employees would be exposed to unusual risk under the conditions specified in this final rule.

Craft Lines

Comments from rail labor argued that this rule would result in an expansion of train and yard crew functions at the cost of car repair employees. Rail management argued that no such change is planned or would occur. FRA has traditionally viewed the blue signal requirements as addressing functional rather than craft distinctions, with the exception of train and yard crews. For instance, if supervisors perform duties that constitute inspecting, testing, repairing, or servicing, and that cause them to go on, under, or between the equipment, they are not excused from blue signal requirements by virtue of their supervisory occupation, unless that person was a member of a crew. Moreover, it must be noted that Congress, in excluding train and yard crews from blue signal requirements, took into consideration the types of duties traditionally performed by those crews and employed craft-based

language to exclude train and yard crew work from the statutory requirement for blue signal protection.

FRA does not intend that this rule cause a material expansion of the tasks performed by train and yard crews without blue signal protection that would decrease the level of safety, particularly for repair and servicing activities. As further discussed below, the final rule addresses these concerns in express language to the effect that only train and yard service duties may be performed without blue signal protection. FRA does not believe that the final rule will materially affect the type of work normally assigned to train or yard crews. Accordingly, it is unlikely to have a major impact on the availability of maintenance of equipment personnel across the national rail system. Any incidental impact can properly be addressed within the scope of other rulemaking activities, if necessary for safety.

FRA believes that many of the comments received in response to this NPRM were beyond the scope of the notice of this rulemaking. As a result, FRA cannot address them in this rule.

In addition, FRA received several late filed comments which were added to the docket. These comments came from rail labor and management. Some commenters urged adoption of the NPRM, withdrawing earlier objections, and one renewed its opposition. FRA considered these comments as much as was possible in such a late stage of the rulemaking process.

Section-by-Section Analysis

Section 218.5 (Definitions) is amended to reorder the existing definitions alphabetically, add new definitions of "controlling locomotive," "ranking crew member," "train and yard crew," "utility employee," and "worker" (in lieu of "workman," in order to make the rule gender-neutral). Under the definition, a "ranking crew member" is an individual responsible for overall supervision of a railroad operating crew and for coordinating the work the crew performs. The ranking crew member is normally specified in the railroad's operating rules, and is typically identified as a Conductor, Yard Engine Foreman, or Locomotive Engineer. If a railroad does not designate who is the ranking crew member, the rule assigns that role to the locomotive engineer since the engineer will have immediate control over movement of the assigned equipment.

Commenters representing rail labor have raised the issue that this rule may encourage the transfer of work from "workers," who require blue signal protection, to "train or yard crews" who do not require such protection. In the final rule, a definition for "train or yard crew" is added. A train or yard crew, a term used in the 1976 amendment to federal railroad safety laws, 45 U.S.C. 431(g)(1), is being defined in order to clarify which railroad employees may be excluded from blue signal protection. FRA has highlighted the limits of the class of employees, the equipment they may be called to operate, and the nature of work that can be safely performed under the exclusion provided in this section. FRA considers the work that was normally performed by train and yard crews under the craft boundaries which existed at the time that the first blue signal regulation was adopted in 1970 to be work excluded from blue signal protection. Generally, train or yard crew members were permitted to work on, under, or between railroad rolling equipment without blue signal protection in order to set or release hand brakes; couple or uncouple air hoses and other electrical or mechanical connections; prepare rail car couplers for coupling; set wheel blocks or wheel chains; conduct air brake tests to include cutting air brake components in or out and positioning retaining valves; and, permit a locomotive engineer to conduct daily visual inspections of the locomotive consist for which he or she was called to operate. Additionally, train or yard crews may inspect, test, install, remove or replace a rear end marking device or end of train device without blue signal protection on their equipment. FRA has long held the belief that any other inspections, tests, services or repairs would be conducted under blue signal protection, even when performed by train or yard service employees. FRA received a number of conflicting comments on this issue. Since these comments were beyond the scope of the notice of the NPRM, FRA believes it will be necessary to revisit this topic in a future rulemaking.

Under the definition, a "utility employee" is an individual assigned to and functioning as a part of a train or yard crew who is subject to both the railroad's operating rules, the Hours of Service Act, and federal drug and alcohol regulations. These defining elements are necessary to ensure that the utility employee is legitimately engaged in service subject to the statutory exclusion and understands and can function safely in the operating environment.

Section 218.22 (Utility employee protection) is a new revised provision which defines the circumstances under which the utility employee may be permitted to function as a member of a train or yard crew without the benefit of the protection provided by the blue signal regulations. It is not anticipated that this section will affect activity within locomotive servicing or car shop areas. FRA requested comments as to whether latitude should have been extended to such areas, but none were received.

Section (a) requires that before a utility employee becomes a temporary member of a train or yard crew, that employee must be subject to the same program of instruction for train and yard crews, and the requirements of §§ 217.9 and 217.11 of this chapter, the drug and alcohol control requirements of part 219, the Hours of Service Act, and the hours of service recording requirements.

Section 217.11 requires that railroads periodically instruct employees on the railroad's operating rules in accordance with its program. FRA expects railroads to amend their programs, if necessary, to ensure that utility employees are thoroughly trained in applicable operating rules. In addition, § 217.9 requires that railroads periodically conduct operational tests and inspections (efficiency tests) to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions in accordance with its program. FRA expects the railroads to amend their programs, if necessary, to ensure that utility employees are included in the required testing and inspections.

A utility employee who is assigned to a train or yard crew is considered to be involved in the movement of a train for hours of service purposes under section 2 of the Hours of Service Act. The "commingled service" provision would of course be applicable if the utility employee engages in any other service for the railroad. Utility employees performing service covered by the Hours of Service Act are also considered to be in safety sensitive service and subject to FRA drug and alcohol control regulations.

In subsection (b), FRA limits the assignment of the utility employee to only one crew at a time. This is necessary to prevent confusion as to the location and duties of that employee, and to ensure that the employee is, in reality, a member of the crew to which he or she is assigned for the duration of the assignment. For example, if an employee is assigned as a train crew member to one train for an entire tour of duty, that employee may not, while awaiting departure from the yard, be temporarily assigned to a second train crew to help them prepare to depart. On the other hand, a member of an inbound train crew at a crew change point,

whose assignment to the train is essentially completed, could then be assigned as a utility employee to the outbound crew to assist in preparation for departure of the train (assuming, of course, that hours of service limitations are not exceeded). Furthermore, an employee could not simultaneously perform duties on two different trains. For the exclusion to apply, a utility employee would have to be indistinguishable in duties and location from any other train crew member.

Subsections (c) and (e) establish the procedures for the utility employee to join a train or yard crew. FRA requires that the crew's locomotive engineer will have taken control of the assigned locomotive before a utility employee performs duties with the crew which will place him in the zone of danger. The presence and vigilance of the engineer at the controls (or, at the very least, in the cab) of the controlling locomotive is essential. Not only can the engineer, by his presence, prevent another employee from moving the equipment, but he or she can further guard against failure of the equipment (e.g., the air brakes) that may lead to unexpected movement, and can also guard against dangers posed by oncoming equipment. The presence of the engineer at the controls was a central factor in FRA's decision that train and yard crews can be safely excluded from blue signal protection.

Notwithstanding FRA's views, several comments were received regarding the presence of the engineer in the cab. These comments follow conflicting themes: first, that the engineer's presence was not essential to protection of the crew; and second, that the engineer's presence provides insufficient protection for the crew. Should the engineer leave the cab, that protection is lost. FRA recognizes that operational expediency may require the locomotive engineer to leave the cab. FRA believes the temporary replacement of the locomotive engineer by a member of his or her own crew provides an equivalent level of safety for any utility employee assigned to the crew.

A single locomotive engineer in helper service, or a single hostler may not take advantage of the exclusion from blue signal protection unless joined by a utility employee. Absent a crew member to monitor the locomotive, blue signal protection is required. The contribution to safety provided by the presence of a crew member in the cab, together with the other requirements of this rule, provide sufficient protection for train and yard crews and utility employees. FRA also limits the utility employee's exclusion from blue signal protection to activities historically excluded when performed by train and yard service employees.

FRA recognizes that communication and coordination among the entire crew, including the utility employee, is crucial to the safety of the utility employee. When assigned to a train or yard crew and on arriving at the place where work is to be performed, the utility employee must establish personal contact with the ranking crew member. The utility employee must be made fully aware of the tasks to be performed while assigned as a member of that crew. While the assignment of a utility employee to a train or yard crew could be made by oral or written communication initiated by railroad supervision, the utility employee would be required to establish personal contact with the ranking crew member by a face-to-face discussion, telephone, radio or other telecommunication. The ranking crew member is required to inform all crew members about the addition of the utility employee; and communication must be established in the manner normally used by the operating crew. Communication of the identity of the utility employee is necessary to prevent confusion, particularly in the event more than one utility employee is assigned to a particular crew or more than one crew is working in the vicinity.

In subsections (d) and (e) FRA requires that the release of the utility employee cannot occur before all crew members are informed that the utility employee has ceased work with the crew. The notice to the crew members must be conveyed in the same manner as when the utility employee joined the crew. If these procedures are not strictly followed, the potential for misunderstanding and failure to properly account for all employees within the zone of danger would be unacceptably high. When fulfilling the proposed communication requirements by radio, strict adherence to proper procedures under 49 CFR part 220 is essential.

FRA received comments from railroad management questioning the necessity of establishing the maximum number of utility employees assigned to a particular train and the corresponding affect on maximum crew size. FRA believes the level of safety provided by the above communication requirements might be compromised in some circumstances if more than three utility employees were concurrently assigned to a crew. As the number of utility employees increases, the ability of the ranking crew member or locomotive engineer to monitor the location and activity of each crew member would diminish. After considering these opinions, FRA determined that the addition of three utility employees to a post-PEB 219 crew would not compromise safety and still permit an adequate number of employees to accomplish the normal work assignment. Industry practice observed by FRA, shows that five is a manageable number of crew members (a locomotive engineer, a conductor or yard foreman, and three brakemen or switchmen). Under subsection (f), therefore, FRA anticipates that a railroad would rarely need to assign more than two utility employees to a crew in order to create an effective work unit. Adding more than three employees could tax unit cohesion at a risk to safety.

In subsection (g) FRA clearly emphasizes that the exclusion for train or yard crew members is only extended to include utility employees who have met the requirements of this rule. Furthermore, the exclusion for train and yard crews continues to apply only to railroad employees who are assigned to a crew and working on, under, or between rolling equipment they have been called or assigned to operate.

In subsection (h) FRA has clarified that this final rule does not change the provisions of § 221.16. FRA received comments concerning the requirements of § 221.16, but found the issue beyond the scope of the notice provided by the NPRM.

Regulatory Impact Analysis

This rule has been evaluated in accordance with existing policies and procedures and is considered to be major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this rule. It may be inspected and copied in room 8201, 400 Seventh Street, SW., Washington, DC 20590. Copies may be obtained by submitting written request to the FRA Docket Clerk at that same address. FRA estimates that the rule will yield a total of approximately $600 million in discounted benefits over 10 years. The potential benefits are about $183 million a year. FRA expects the industry to realize only 30 percent of that amount in the first year and 75 percent of the potential annual benefit in the tenth year.

FRA does not believe this rule will have any direct, adverse economic impact. It is possible that some indirect costs may be associated with the final

rule. FRA estimates that railroads may elect to purchase radio equipment costing $130,000 in discounted costs over ten years. This cost is not imposed by the rule, but railroads may make the expenditure in order to take advantage of the rule.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA believes that this final rule will have a beneficial economic impact on a substantial number of small entities, and did not receive comments proposing this impact be adjusted. A Regulatory Flexibility Analysis has been placed in the docket and copies may be obtained by contacting the FRA Docket Clerk. FRA's analysis found that the rule will allow railroads to operate more efficiently because of increased flexibility in assigning employees. For example, railroads will not have to employ additional crew members for an entire shift if those employees are only needed for yard operations. The reduced time needed to place and remove end-of-train markers should also produce a benefit.

Federalism Implications

This rule 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, FRA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Paperwork Reduction Act

There are no new information collection requirements in these FRA regulations. Consequently, no estimate of a public reporting burden is required.

Environmental Impact

These rule revisions will not have any identifiable environmental impact.

The Rule

In consideration of the foregoing, FRA amends part 218 of title 49, Code of Federal Regulations as follows:

PART 218—[AMENDED]

1. The authority for part 218 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Amend the part by removing the term "workman" wherever it appears and by inserting in its place "worker," and by removing the term "workmen" wherever it appears and by inserting in its place "workers."

3. Revise § 218.5 to read as follows:

§ 218.5 Definitions.

Absolute block means a block in which no train is permitted to enter while it is occupied by another train.

Blue signal means a clearly distinguishable blue flag or blue light by day and a blue light at night. When attached to the operating controls of a locomotive, it need not be lighted if the inside of the cab area of the locomotive is sufficiently lighted so as to make the blue signal clearly distinguishable.

Camp car means any on-track vehicle, including outfit, camp, or bunk cars or modular homes mounted on flat cars used to house rail employees. It does not include wreck trains.

Car shop repair track area means one or more tracks within an area in which the testing, servicing, repair, inspection, or rebuilding of railroad rolling equipment is under the exclusive control of mechanical department personnel.

Controlling Locomotive means a locomotive arranged as having the only controls over all electrical, mechanical and pneumatic functions for one or more locomotives, including controls transmitted by radio signals if so equipped. It does not include two or more locomotives coupled in multiple which can be moved from more than one set of locomotive controls.

Effective locking device when used in relation to a manually operated switch or a derail means one which is:

(1) Vandal resistant;

(2) Tamper resistant; and

(3) Capable of being locked and unlocked only by the class, craft or group of employees for whom the protection is being provided.

Flagman's signals means a red flag by day and a white light at night, and a specified number of torpedoes and fusees as prescribed in the railroad's operating rules.

Group of workers means two or more workers of the same or different crafts assigned to work together as a unit under a common authority and who are in communication with each other while the work is being done.

Interlocking limits means the tracks between the opposing home signals of an interlocking.

Locomotive means a self-propelled unit of equipment designed for moving other railroad rolling equipment in revenue service including a self-propelled unit designed to carry freight or passenger traffic, or both, and may consist of one or more units operated from a single control.

Main track means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

Ranking crew member means an individual in whom the general charge of the train or yard crew is vested in accordance with the railroad's operating rules. Unless otherwise designated by the railroad, the ranking crew member will be the assigned locomotive engineer.

Rolling equipment includes locomotives, railroad cars, and one or more locomotives coupled to one or more cars.

Switch providing access means a switch which if traversed by rolling equipment could permit that rolling equipment to couple to the equipment being protected.

Train or yard crew means one or more railroad employees assigned a controlling locomotive, under the charge and control of one crew member; called to perform service covered by Section 2 of the Hours of Service Act; involved with the train or yard movement of railroad rolling equipment they are to work with as an operating crew; reporting and working together as a unit that remains in close contact if more than one employee; and subject to the railroad operating rules and program of operational tests and inspections required in §§ 217.9 and 217.11 of this chapter.

Utility employee means a railroad employee assigned to and functioning as a temporary member of a train or yard crew whose primary function is to assist the train or yard crew in the assembly, disassembly or classification of rail cars, or operation of trains (subject to the conditions set forth in § 218.22 of this chapter).

Worker means any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment, or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or been assigned to as "utility employees"). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.22 of this chapter), are excluded only when so assigned and functioning.

Note: Servicing does not include supplying cabooses, locomotives, or passenger cars with items such as ice, drinking water, tools, sanitary supplies, stationery, or flagging equipment.

Testing does not include (i) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (ii) marker inspections made in accordance with the provisions of § 221.16(b) of this chapter.

4. Add a new § 218.22 to read as follows:

§ 218.22 Utility employee.

(a) A utility employee shall be subject to the Hours of Service Act, and the requirements for training and testing, control of alcohol and drug use, and hours of service record keeping provided for in parts 217, 219, and 228 of this chapter.

(b) A utility employee shall perform service as a member of only one train or yard crew at any given time. Service with more than one crew may be sequential, but not concurrent.

(c) A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions:

(1) The train or yard crew is assigned a controlling locomotive that is under the actual control of the assigned locomotive engineer of that crew;

(2) The locomotive engineer is in the cab of the controlling locomotive, or, while the locomotive is stationary be replaced in the cab by another member of the same crew;

(3) The utility employee established communication with the crew by contacting the ranking crew member on arriving at the train (as defined for the purpose of this section as one or more locomotives coupled, with or without cars) and before commencing any duties with the crew.

(4) Before each utility employee commences duties, the ranking crew member shall provide notice to each crew member of the presence and identity of the utility employee. Once all crew members have acknowledged this notice, the ranking crew member shall advise the utility employee that he or she is authorized to work as part of the crew. Thereafter, communication shall be maintained in such a manner that each member of the train or yard crew understands the duties to be performed and whether those duties will cause any crew member to go on, under, or between the rolling equipment; and

(5) The utility employee is performing one or more of the following functions: set or release hand brakes; couple or uncouple air hoses and other electrical or mechanical connections; prepare rail cars for coupling; set wheel blocks or wheel chains; conduct air brake tests to include cutting air brake components in or out and position retaining valves; inspect, test, install, remove or replace a rear end marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

(d) When the utility employee has ceased all work in connection with that train and is no longer on, under, or between the equipment, the utility employee shall notify the ranking crew member. The ranking crew member shall then provide notice to each crew member that the utility employee is being released from the crew. Once each crew member has acknowledged the notice, the ranking crew member shall then notify the utility employee that he is released from the train or yard crew.

(e) Communications required by § 218.22(c)(4) and (d) shall be conducted between the utility employee and the ranking crew member. This communications shall be conducted either through direct verbal contact, by radio in compliance with part 220 of this chapter, or by oral telecommunication of equivalent integrity.

(f) No more than three utility employees may be attached to one train or yard crew at any given time.

(g) Any railroad employee who is not assigned to a train or yard crew, or authorized to work with a crew under the conditions set forth by paragraph (b) of this section, is a worker required to be provided blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

(h) Nothing in this section shall affect the alternative form of protection specified in § 221.16 of this chapter with respect to inspection of rear end marking devices.

5. In Appendix A to Part 218—Schedule of Civil Penalties, a new section is added in numerical order to the penalty schedule as follows:

Appendix A to Part 218—Schedule of Civil Penalties

Section	Violation	Willful violation
Subpart B—Blue Signal Protection of workers:		
218.22 Utility employees:		
(a) Employee qualifications	$5,000	$7,500
(b) Concurrent service	$5,000	$7,500
(c) Assignment conditions.		
(1) No controlling locomotive	$5,000	$7,500
(2) Empty cab	$5,000	$7,500
(3)(4) Improper communication ..	$5,000	$7,500
(5) Performing functions not listed	$2,000	$4,000
(d) Improper release of utility employee	$2,000	$4,000
(f) More than three utility employees with one crew	$2,000	$4,000

* * * * *

Appendix C [Redesignated from Appendix B]

6. Appendix B to part 218 is redesignated as Appendix C, and the title is revised to read as follows: "Statement of Agency Enforcement Policy on Tampering".

7. A new appendix B to part 218 is added to read as follows:

Appendix B to part 281—Statement of Agency Enforcement Policy on Blue Signal Protection for Utility Employees

The following examples of the application of the train or yard crew exclusion from required blue signal protection for utility employees are provided to clarify FRA's enforcement policy. In the first four examples, the utility employee is properly attached to and functioning as member of a train or yard crew and is excluded from blue signal protection, provided all the conditions specified in § 218.22 are met:

Example 1: A utility employee assists a train crew by adding or reducing railroad cars to or from the train. The utility employee may perform any duties which would normally be conducted by members of the train crew, i.e., setting or releasing handbrakes, coupling air hoses and other connections, prepare rail cars for coupling, and perform air brake tests.

Example 2: A utility employee is assigned to assist a yard crew for the purpose of classifying and assembling railroad cars. The yard crew onboard their locomotive arrives at the location in the yard where the work is to be performed. At that time, the utility employee may attach himself to the yard crew and commence duties as a member of that yard crew.

Example 3: A utility employee is assigned to inspect, test, remove and replace if necessary, a combination rear end marking device/end of train device on a through freight train. The utility employee attaches himself to the train crew after the arrival of the train and its crew at the location where this work is to be conducted. He may then perform duties as a member of that crew.

Example 4: A railroad manager who properly attaches himself as a utility employee to a train or yard crew, in accordance with § 218.22, may then function as a member of the train or yard crew under the exclusion provided for train and yard crews.

Note: In the last four examples, any railroad employee, including regularly assigned crew members, would need blue signal protection to perform the described function.

Example 5: Prior to the arrival of a through freight train, a utility employee installs an end-of-train device on one end of a block of railroad cars that are scheduled to be picked up by the freight train.

Example 6: A railroad employee attaches himself to a train or yard crew while the crew is in the ready room preparing to take charge of their train. Prior to the train crew leaving the ready room and taking charge of the equipment, the employee couples air hoses and other connections between the locomotives.

Example 7: A railroad employee is attached to a train crew after the train crew has taken charge of the train. It is necessary for the employee to perform a repair on a rail car, such as replacing a brake shoe, in addition to those duties normally performed by train or yard crew members.

Example 8: A train or yard crew, supplemented by three utility employees, has an assigned locomotive and train. The regular crew, including the engineer, has left the train to eat lunch. The utility employees have remained with the train and are coupling air hoses between rail cars in the train.

Issued in Washington, DC, on August 5, 1993.

S. Mark Lindsey,

Acting Federal Railroad Administrator.

[FR Doc. 93–19484 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–06–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 11)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1993 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts the 1993 User Fee Update and revises its fee schedule in compliance with the regulatory requirement that its fees be updated annually.

EFFECTIVE DATE: This rule is effective on October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202–927–5493, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The update formula produces increases for most fees because all cost factors increased this year. Fees for two of the most frequently made filings will increase as follows: Fee Item (1) for motor carrier applications will increase to $300 and Fee Item (74) for tariff filings will increase to $10. The Commission is deferring any increases in the fees for rail finance, abandonment, and exemption proceedings and complaints and complaint-type declaratory order proceedings until next year because a cost study is being conducted.

The fee increases involved here result only from the mechanical application of the update formula at 49 CFR 1002.3(d), adopted through notice and comment procedure in Regulations Governing Fees For Services—1987 Update, 4 I.C.C.2d 137 (1987). Therefore, the Commission believes that good cause exists for finding that notice and comment are unnecessary for this proceeding under 5 U.S.C. 553(b)(3)(B). See Regulations Governing Fees For Services—1990 Update, 7 I.C.C.2d 3 (1990), and Regulations Governing Fees For Services—1991 Update, 8 I.C.C.2d 13 (1991).

The Commission concludes that these fee increases will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for waiver of filing fees for those entities which can make the required showing of financial hardship.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359 (Assistance for the hearing impaired is available through TDD services (202) 927–5721).

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: August 4, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended 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. Section 1002.1 is amended by revising paragraphs (b), (c), and (e)(1) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $22.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, *etc.*, incidental thereto, at the rate of $15.00 per hour.

* * * * *

(e) * * *

(1) A fee of $38.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate	Grade	Rate
GS–1	$6.46	GS–9	$15.09
GS–2	7.04	GS–10	16.62
GS–3	7.93	GS–11	18.26
GS–4	8.90	GS–12	21.88
GS–5	9.96	GS–13	26.02
GS–6	11.10	GS–14	30.75
GS–7	12.34	GS–15 and over.	36.17
GS–8	13.66		

* * * * *

3. Section 1002.2 is amended by revising paragraph (f) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
Part I: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority.	$300.
(2) A fitness-only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products.	$100.
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.66.	$2,700.
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number.	$50.
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923.	$200.
(6) An application to remove restriction or broaden unduly narrow authority.	$300.
(7) An application for authority to deviate from authorized regular-route authority.	$150.
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928.	$100.
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1).	$90.
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue.	$23
(11) Request for name change of carrier, broker, or household goods freight forwarder	$10.
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.3.	$60.
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5).	$60
(14) [Reserved].	
(15)A joint petition to substitute applicant in a pending operating rights proceeding.	$28.
(16) [Reserved].	
Part II: Non-Rail Applications To Discontinue Transportation	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908.	$11,300.
(18) A petition to discontinue motor carrier of passenger transportation in one state.	$1,000.
(19) [Reserved].	
Part III: Non-Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic.	$2,200.
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343.	$1,000.
(22) An application for approval of a non-rail rate association agreement, 49 U.S.C. 10706.	$13,800.
(23) An application for approval of an amendment to a non-rail rate association agreement.	
(i) Significant amendment	$2,300.
(ii) Minor amendment	$50.
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349.	$250.
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license under 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544.	$250.
(26) [Reserved].	
(27) A petition for exemption under 49 U.S.C. 11343(e).	$250.
(28)–(32) [Reserved].	
Part IV: Rail Application for Operating Authority	
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	$3,600.
(ii) Exempt transaction under 49 CFR 1150.31.	$1,500.
(34) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i).	$4,400.
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b))(1)(A)(ii).	$2,500.
(36)–(37) [Reserved].	
Part V: Rail Applications To Discontinue Transportation Services	
(38) An application for authority to abandon all or portion of a line of railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act (Subtitle E of Title XI of Pub. L. 97–35), Bankrupt railroads, or exempt abandonments under 49 CFR 1152.50).	$4,500.
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	$200.
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40.	$900.
(41) Exempt abandonments. 49 CFR 1152.50.	$2,125.
(42) A notice or petition to discontinue passenger train service.	$11,200.
(43) [Reserved].	
Part VI: Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103.	$9,400.
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342.	$5,100.

Type of proceeding	Fee
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343.	
(i) Major transaction	$185,400.
(ii) Significant transaction	$37,000.
(iii) Minor transaction	$3,100.
(iv) Exempt transaction (49 CFR 1180.2(d)).	$750.
(v) Responsive application.	$3,100.
(47) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	$185,400.
(ii) Significant transaction	$37,000.
(iii) Minor transaction	$3,100.
(iv) Exempt transaction (49 CFR 1180.2(d)).	$750.
(v) Responsive application.	$3,100.
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343.	
(i) Major transaction	$185,400.
(ii) Significant transaction	$37,000.
(iii) Minor transaction	$3,100.
(iv) Exempt transaction (49 CFR 1180.2(d)).	$750.
(v) Responsive application.	$3,100.
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	$185,400.
(ii) Significant transaction	$37,000.
(iii) Minor transaction	$3,100.
(iv) Exempt transaction (49 CFR 1180.2(d)).	$750.
(v) Responsive application.	$3,100.
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(a)(2) or (b).	$37,000.
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706.	$34,900.
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706.	
(i) Significant amendment	$6,400.
(ii) Minor amendment	$50.
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322.	$350.
(54) (i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of Ex Parte No. 158, 49 CFR part 1175. 49 U.S.C. 11301.	$1,600.
(ii) An exempt transaction under 49 CFR Part 1175.	$750.
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505.	
(i) Financial exemption petitions.	$3,625.
(ii) Abandonment exemption petitions.	$3,000.
(iii) Construction, extension, acquisition, or operation of a rail line.	$3,000.
(iv) Other exemption	$1,625.
(56)–(59) [Reserved].	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers, or freight forwarders of household goods.	$1,000.
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares, or charges. 49 U.S.C. 10705(f)(1)(A).	$1,000.
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparble to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order.	$1,300.
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases.	$7,700.
(64) A petition for exemption from filing tariffs by bus carriers.	$250.
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A).	$3,500.
(66) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate rail carriers. 49 U.S.C. 11501.	$1,000.
(67) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate bus carriers. 49 U.S.C. 11501.	$1,900.
(68)–(71) [Reserved].	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster).	$600.
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements.	$60.
(74) The filing of tariffs, rate schedules, contracts and/or contract summaries, including supplements.	$10 per series transmitted.
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less).	$70.
(76) Informal complaint about rail rate application.	$250.
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD).	$3,700.
(ii) An application for original qualification as self-insurer for cargo insurance.	$300.
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond, or other instrument submitted in lieu of a broker surety bond.	$10 per accepted certificate or other instrument submitted in lieu of a broker surety bond.
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR part 1057.	$400.
(80) A petition for reinstatement of revoked operating authority.	$60.
(81)–(82) [Reserved].	
(83) Petition for reinstatement of a dismissed operating rights application.	$400.
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c).	$18 per document.

Type of proceeding	Fee
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceeding.	$1,400.
(86) Informal opinions about rate applications (all modes).	$50.
(87)–(95) [Reserved].	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent.	$14 per delivery.
(97) Request for service list for proceedings.	$10 per list.
(98) Requests for copies of the one-percent carload waybill sample.	$150.
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.	$19 per movement verified.
(100) Application fee for Interstate Commerce Commission Practitioners' Exam.	$90.

[FR Doc. 93–19644 Filed 8–12–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185–3021; I.D. 081193A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Atka mackerel in the Central and Western districts of the Aleutian Islands subarea (AI). This action is necessary to fully utilize the total allowable catch (TAC) of Atka mackerel in these districts.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 11, 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 Bering Sea and Aleutian Islands (BSAI) exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (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 675.

In accordance with § 675.20(a)(7)(ii), the Atka mackerel TAC for the BSAI was established by the final 1993 specifications of groundfish (58 FR 8703, February 17, 1993) as 27,200 metric tons (mt), and later augmented from the reserve to a total of 32,000 mt (58 FR 14172, March 16, 1993). The directed fishery for Atka mackerel was closed on March 11, 1993 (58 FR 14173, March 16, 1993).

The final rule implementing Amendment 28 to the FMP, effective on August 11, 1993, establishes three new management districts in the AI (Eastern, Central, and Western districts) and divides the Atka mackerel TAC for 1993 among the new AI districts and the Bering Sea subarea (58 FR 37660, July 13, 1993). The initial TAC specified in the final rule for the Eastern AI district/Bering Sea subarea is 2,992 mt. Because this amount has been harvested as a result of the fishing activity that occurred earlier this year for Atka mackerel, this area remains closed to directed fishing until December 31, 1993. The initial TAC specified for the Western AI district is 11,968 mt, with a current harvest of 0 mt. For the Central AI district, the initial TAC is 12,240 mt and the current harvest is 0 mt.

The Regional Director, Alaska Region, NMFS, has determined that the TAC for Atka mackerel in the Central and Western districts of the AI are sufficient to sustain directed fisheries. Therefore, NMFS is rescinding the closure to directed fishing in the Central and Western districts of the AI effective at 12 noon, A.l.t., August 11, 1993, through 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19689 Filed 8–11–93; 2:25 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 156
Monday, August 16, 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

Agricultural Stabilization and Conservation Service

7 CFR Part 735

RIN 0560–AD14

Using Electronic Cotton Warehouse Receipts—Amendment to the United States Warehouse Act

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to authorize the issuance of electronic cotton warehouse receipts by warehousemen licensed by the Agricultural Stabilization and Conservation Service (ASCS) under the provisions of the United States Warehouse Act (USWA). This rule implements changes made to the USWA by Public Law 102–553, (October 28, 1992).

DATES: Comments must be received by October 15, 1993, in order to be assured of consideration.

ADDRESSES: Send comments on this proposed rule to Director, Licensing Authority Division, U.S. Department of Agriculture (USDA), Agricultural Stabilization and Conservation Service, P.O. Box 2415, room 5962–S, Washington, DC 20013–2415, telephone 202–720–2121, FAX 202–690–0014.

All submissions will be available for public inspection during regular business hours in room 5962, South Agriculture Building, USDA, 14th and Independence Avenue, SW., Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen or Lynda Moore, Agricultural Marketing Specialists, ASCS, USDA, telephone 202–720–2121.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This proposed rule has been reviewed under USDA procedures which implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." It has been determined that this proposed rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

No Significant Impact

The Administrator of ASCS certifies that this rule will not have a significant impact on a substantial number of participating individuals and entities because the procedure set out in this rule would not increase, but would rather decrease, the time and paperwork necessary to process an administrative review.

Executive Order 12612

Executive Order 12612 of October 26, 1987, entitled "Federalism", requires that Executive departments and agencies shall, to the extent permitted by law adhere to certain principles of federalism. The Administrator of ASCS has determined that this program 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.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. This proposed rule does not have any preemptive effect with respect to State laws with the exception that for State law purposes an electronic warehouse receipt issued by a Federally licensed warehousemen shall have the same effect as a paper warehouse receipt issued by the same warehousemen. This proposed rule is not retroactive.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because it has been determined that this rule will not have an adverse effect on a substantial number of small businesses.

Paperwork Reduction Act

This proposal contains new recordkeeping requirements. However, since this procedure would be voluntary, not mandatory, all figures submitted for OMB review will be sketchy estimates. These new recordkeeping requirements will be submitted for OMB approval under the provisions of 44 U.S.C. chapter 35.

Background

Pursuant to the provisions of the USWA, the Secretary has the authority to license public warehousemen of cotton (7 U.S.C. 238 *et seq.*). As a part of this licensing authority, the Secretary has the responsibility to regulate the issuance of warehouse receipts by the cotton warehousemen it licenses (7 U.S.C. 257). Currently, the provisions of section 18 of the USWA and 7 CFR part 735 of the regulations, prescribe the content and the issuance of cotton warehouse receipts.

Public Law 102–553 amended the USWA to provide the Secretary of Agriculture (through ASCS) with the discretionary authority to allow the cotton warehousemen it licenses to issue cotton warehouse receipts in electronic format (electronic warehouse receipts). To implement this discretionary authority, this rule proposes to voluntarily allow USWA licensed warehousemen to issue electronic cotton warehouse receipts for bales of cotton stored by those warehousemen. These electronic warehouse receipts would be maintained by private entities called

providers. This rule proposes that USWA licensed warehousemen be required to use providers of electronic warehouse receipt systems that are licensed by the Secretary for that purpose.

The proposed rule would require providers to give, at no charge, access to its warehouse receipt records to those who have a direct interest in the warehouse receipt. In addition, this rule proposes that providers would allow any party access to the electronic warehouse receipts maintained in its central filing system on a read only basis.

The Secretary would charge providers a fee to cover the agency's costs associated with administering and supervising the electronic warehouse receipt system as authorized by Public Law 102–553. It is anticipated that this fee will initially fall into the range of $.10 to $1.00 per bale.

The proposed rule does not limit the number of providers that may be licensed by the Secretary, nor does it limit the fees that providers may charge USWA licensed warehousemen. The proposed rule would allow warehousemen the opportunity to change providers once a year.

The proposed rule would also allow providers licensed by the Secretary to accept electronic cotton warehouse receipts from warehousemen not licensed by the Secretary. However, the Secretary, under this proposed rule, would not regulate or take any responsibility for such warehousemen, the cotton stored in their warehouses, the content of warehouse receipts issued by such warehousemen, or the manner in which such warehouse receipts are issued. Such matters would be governed by the applicable State law.

The proposed rule would apply the same lost warehouse receipt procedures for lost electronic warehouse receipts as are presently applicable to paper warehouse receipts. It is anticipated that this lost warehouse receipt provision will only come into effect when a provider has suffered a system wide failure affecting its primary and backup systems.

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, it is proposed that 7 CFR part 735 be amended as follows:

PART 735—[AMENDED]

1. The authority citation for 7 CFR part 735 is revised to read as follows:

Authority: 7 U.S.C. 268.

2. Section 735.2 is amended by adding paragraphs (bb) through (jj) to read as follows:

Sec. 735.2 Terms defined.

* * * * *

(bb) *Central filing system.* An electronic computer system operated and maintained by a licensed provider where the information on electronic warehouse receipts is recorded.

(cc) *Contract.* A contract entered into between a provider and a user of the central filing system.

(dd) *Electronic warehouse receipt.* Information contained in the central filing system which must be at least the information required to be included in a warehouse receipt under Section 18 of the Act, and § 735.16, regarding a bale of cotton; and the names of the current holder and owners.

(ee) *Financial Institution.* An entity such as a bank or savings and loan that is chartered or licensed by a State or Federal agency to provide financial services.

(ff) *Holder.* An individual or entity in possession, in fact, or by operation of law, of a receipt.

(gg) *Licensing Agreement.* An agreement entered into between the Secretary (ASCS) and a provider that delineates the provider's responsibilities and defines the relationship between the provider and ASCS regarding the provider's maintenance of electronic warehouse receipts and other requirements issued pursuant to this part.

(hh) *Owner.* An individual or entity that has ownership interest in a bale of cotton and is identified on the electronic warehouse receipt as owner.

(ii) *Provider.* An individual or entity licensed under the Act that has a current and valid Licensing Agreement with ASCS.

(jj) *User.* An individual or entity that uses the services of the provider to access warehouse receipt information in the provider's central filing system.

§§ 735.94; 735.95, 735.96, 735.97, 735.98, 735.99 [Added and Reserved]

3. Sections 735.94 through 735.99 are added and reserved.

4. An undesignated centerheading entitled, "Electronic Warehouse Receipts" (§§ 735.100 through 735.108) is added to read as follows:

Electronic Warehouse Receipts

Sec.

735.100 General statement.
735.101 Electronic warehouse receipts.
735.102 Providers.
735.103 Audits.
735.104 Access.
735.105 Provider warehouseman relationship.
735.106 Provider user relationship.
735.107 Suspensions.
735.108 Security.

Electronic Warehouse Receipts

§ 735.100 General statement.

If a licensed warehouseman chooses to issue electronic warehouse receipts, such receipts may only be issued through a provider who is licensed by ASCS. Electronic warehouse receipts issued pursuant to this part are considered equal to paper warehouse receipts issued pursuant to this part. A party listed as a holder of an electronic warehouse receipt issued under this part shall have the same rights and obligations as if that party was in possession of a paper warehouse receipt issued under this part.

§ 735.101 Electronic warehouse receipts.

(a) Electronic warehouse receipts created and issued pursuant to this part shall establish the same rights and obligations with respect to a bale of cotton as a paper receipt pursuant to this part. With the exception of the requirement that warehouse receipts be created on paper (§ 735.19), all other requirements applicable to warehouse receipts created on paper shall apply to electronic warehouse receipts, unless otherwise specified in this part.

(b) An electronic warehouse receipt is considered issued when the licensed warehouseman transmits all the data required to be contained in an electronic warehouse receipt, under this section, to the provider.

(c) Electronic warehouse receipts must be issued as single bale receipts.

(d) Electronic warehouse receipts must designate the name of the current holder and owners of the receipt.

(e) Licensed warehousemen may cancel electronic warehouse receipts only when they are the holder of such receipts.

(f) Licensed warehousemen, only as holder, may correct inaccurate information on the electronic warehouse receipt.

(g) Only the current holder of the receipt may change the holder or owners of the receipt.

(h) Only one unique electronic warehouse receipt number shall exist for a single bale of cotton at a time. An electronic warehouse receipt shall not be issued for a bale of cotton if such bale is covered by an existing, valid warehouse receipt.

(i) An electronic warehouse receipt shall only designate one holder at a time.

(j) Electronic warehouse receipts shall not be issued for defective cotton as defined in § 735.70.

(k) Licensed warehousemen must inform the Secretary of the identity of their licensed provider 60 calendar days in advance of issuing warehouse receipts through that provider.

(l) Owners, holders, and licensed warehousemen may authorize any other user of a provider to act on their behalf with respect to their activities with such provider. Such authorization must be in writing on a form approved by the Secretary.

(m) An electronic warehouse receipt may only be issued if the current holder of the warehouse receipt agrees. In the case of cotton for which no warehouse receipt exists, an electronic warehouse receipt may only be issued if the owner agrees.

(n) Provisions of § 735.18 shall be applicable for lost electronic warehouse receipts.

§ 735.102 Providers.

(a) A provider authorized to maintain electronic warehouse receipts in a central filing system issued under this part must have a valid Licensing Agreement with ASCS.

(b) The provider must furnish performance security as stated in the Licensing Agreement.

(c) Providers must pay fees to the Secretary pursuant to the terms and conditions of the Licensing Agreement to cover the Secretary's estimated costs incident to the oversight of the overall electronic warehouse receipt filing system.

(d)(1) The provider and any individual or entity that is responsible for the information maintained by the provider, must not have an ownership interest in:

(i) Baled cotton,

(ii) A public warehouse that stores cotton, or

(iii) Any other provider.

(2) However, for the purposes of this paragraph, an ownership interest in baled cotton does not include, on the part of financial institutions only, a security interest or subsequent ownership as the result of foreclosure or default.

(e) Licensing Agreements will be for a term no longer than one year ending on April 30.

(f) Providers must establish and retain a contemporaneous record of each and every entry into their central filing system. Such records must be maintained for a period of at least six years, unless otherwise notified in writing by the Secretary.

(g) Providers will be strictly liable to their users and the Secretary for any losses and costs associated with lost or destroyed electronic warehouse receipts.

(h) With the exception of correcting malfunctions and performing system verifications and maintenance, the provider, unless it is acting as a holder (and then solely for the purpose of transferring to a different holder), shall not have access to its central filing system and shall not have the authority to create, amend, void, or cancel electronic warehouse receipts maintained in its central filing system.

(i) A provider may not transfer electronic warehouse receipts from its central filing system to another central filing system until:

(1) The provider has furnished the Secretary with a complete listing of all warehouse receipts being transferred and the identity of the provider who is to receive the warehouse receipts, and

(2) The provider has received written permission from the Secretary to perform such a transfer.

§ 735.103 Audits.

(a) The provider must submit to the Secretary an annual audited financial statement that meets the requirements established in § 735.5 with the exception of § 735.5(d)(1) (i), (e), (g), and (h) applicable to warehousemen; and an electronic data processing audit that shall comply with the standards set by the American Institute of Certified Public Accountants. The electronic data processing audit shall be performed by an independent organization skilled in such audits. These audits shall cover the provider's fiscal year and the completed audits shall be submitted to the Secretary no later than four calendar months following the end of the fiscal year which the audits cover. With respect to the electronic data processing audit, the auditor shall review computer operations, security, and disaster recovery capabilities for said system. In addition, this audit shall review system compliance with current Federal regulations and the Licensing Agreement. This audit shall result in an opinion by the auditor as to current computer operations, security, and disaster recovery capabilities of the system.

(b) All records of original entries and changes in warehouse receipts, ownership, past and present holders, amendments, and any transaction information concerning electronic warehouse receipts, whether it appears on the electronic warehouse receipt or not, must be accessible for audit purposes. All of this information must be maintained by the provider for six years after cancellation of the electronic warehouse receipt.

(c) The provider will grant the Secretary and his designees unlimited, free access at any time to all records in the possession of the provider or under the provider's control relating to its activities conducted under this part. The provider's central filing system must be capable of being directly connected with the ASCS computer system as provided in the Licensing Agreement.

§ 735.104 Access.

(a) A provider must allow read only access, at no cost, to electronic warehouse receipts it maintains, to USWA licensed warehousemen (or their designees) with respect to the electronic warehouse receipts such warehousemen have in the provider's system, to the holder (or their designees) listed on electronic warehouse receipts it maintains, and to owners (or their designees) listed on electronic warehouse receipts it maintains in its central filing system.

(b) Providers may allow access to the electronic warehouse receipts it retains in its central filing system to any other party on a nondiscriminatory basis.

§ 735.105 Provider warehouseman relationship.

(a) A licensed warehouseman may only contract with one licensed provider for a 12-month License Agreement cycle as described in § 735.102(e), per warehouse license issued by the Secretary.

(b) When a licensed warehouseman changes providers, the warehouseman must transfer all warehouse receipts in the central filing system to another provider licensed by ASCS. Such transfer must be effective as of the last day of the month the transfer is made.

(c) Unless the Secretary otherwise agrees, licensed warehousemen must notify all owners and holders of cotton receipted in the central filing system at least 30 calendar days before changing providers.

(d) If a licensed warehouseman does not have a valid contract with a provider licensed under this part, the warehouseman shall not issue electronic warehouse receipts.

§ 735.106 Provider user relationship.

(a) The provider user relationship must be defined by a contract.

(b) The contract should contain the fees that the provider will charge the user for services rendered.

(c) The provider shall not discriminate among its users as defined in § 735.104 regarding access to its

central filing system and must charge fees on a uniform schedule basis to all users for its services.

(d) The provider must furnish the Secretary with copies of its current schedule of fees for all services and charges as they become effective.

§735.107 Suspensions.

(a) Pending investigation, the Secretary may suspend or revoke a provider's license. Suspensions or revocations may be issued when the provider:

(1) Does not have control, in whole or in part, of its central filing system;

(2) Does not maintain, in the opinion of the Secretary, adequate security of the central filing system to protect the integrity of the USWA electronic warehouse receipts it maintains;

(3) Does not permit the Secretary access on-demand to the provider's records as required by this part;

(4) Is in the process of dissolution or has been dissolved;

(5) Has ceased to operate and control the central filing system;

(6) Has in any manner become nonexistent, incompetent, or incapacitated to conduct business;

(7) Has in any manner violated or failed to comply with the Act and its regulations or the Licensing Agreement; or

(8) Does not provide adequate and approved performance security required by this part and the Licensing Agreement.

(b) Suspended providers may not accept or transfer electronic warehouse receipts without authority granted by the Secretary. Additionally, during a provider's suspension, the provider's users may not create, amend, cancel, or void electronic warehouse receipts in the central filing system without the express approval of ASCS.

(c) During periods of provider suspension, licensed warehousemen must issue paper warehouse receipts unless otherwise advised in writing by the Secretary.

(d) Hearings and appeals will be conducted in accordance with procedures that are contained in §§735.7 and 735.89.

§735.108 Security.

(a) Providers' central filing systems must include sufficient security measures to limit access to authorized users, only. The provider will be strictly liable for any losses or damages to the Secretary and all other interested parties with respect to unauthorized entries into the provider's central filing system.

(b) The Licensing Agreement will require specific security measures that all providers must include in their central filing systems. These security measures will include logging of all accesses to an on-line system to support intrusion detection and protection.

(c) Security standards must meet the standards set by the American Institute of Certified Public Accountants, or those requirements set out in the Licensing Agreement.

(d) Both on-site and off-site record security must be maintained.

Signed at Washington, DC, on August 9, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–19657 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 93–016–2]

Ports Designated for the Exportation of Animals; Kentucky and New Jersey; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correction to a proposed rule.

SUMMARY: We are correcting an error in a proposed rule that would amend the Inspection and Handling of Livestock for Exportation regulations. This proposed rule was published in the **Federal Register** on July 13, 1993 (58 FR 37667–37669, Docket No. 93–016–1).

DATES: Consideration will be given only to comments on the proposed rule, as corrected by this document, received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–016–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information concerning the Kentucky port, contact Dr. Michael David, Senior Staff Veterinarian, National Center for Import Export, VS, APHIS, USDA, room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7511.

For information concerning the New Jersey port, contact Dr. Najam Faizi, Senior Staff Veterinarian, National Center for Import Export, VS, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION: On July 13, 1993, we published in the **Federal Register** (58 FR 37667–37669, Docket No. 93–016–1) a proposal that would amend the Inspection and Handling of Livestock for Exportation regulations (contained in 9 CFR part 91) by, among other things, designating Woodstown, NJ, as a port of embarkation and Deep Hollow Farms in Woodstown, NJ, as an export inspection facility for that port. However, the port of embarkation is actually in Salem, NJ, and it is only Deep Hollow Farms that is in Woodstown. This document corrects §91.14, new paragraph (a)(10)(i), of the proposed rule to reflect the correct address of the port of embarkation, as follows:

PART 91—[CORRECTED]

§91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(10) * * *

(i) Salem—ocean port.

* * * * *

Done in Washington, DC, this 10th day of August 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–19594 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–79–AD]

Airworthiness Directives; Boeing Model 737 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 Boeing Model 737 series airplanes. This proposal would require repetitive tests of the main rudder power control unit (PCU) to detect

internal leakage of hydraulic fluid, and the eventual replacement of the main rudder PCU with an improved model. This proposal is prompted by results of an investigation which revealed that the secondary slide in the servo valve of certain PCU's can go past the intended maximum-travel position. The actions specified by the proposed AD are intended to prevent secondary slide overtravel from occurring, which could cause the rudder actuator piston and the rudder to move opposite to the intended direction and result in reduced controllability of the airplane.

DATES: Comments must be received by October 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–79–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 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.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Frey, Aerospace Engineer, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2673; fax (206) 227–1181.

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–79–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–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The manufacturer has advised the FAA that there have been two reports of rudder control anomalies on Boeing Model 737 series airplanes, which were discovered during preflight controls checks. In both cases, the flight crew reported that the rudder pedals operated normally in one direction, but that pedal travel was reduced in the opposite direction while being cycled in accordance with controls checks procedures. When foot pressure was released from the pedals, the pedals recentered as normal. Investigation of this anomaly revealed that, under certain conditions, the secondary slide in the dual servo valve on the rudder power control unit (PCU) can go past the intended maximum-travel position. This condition could cause hydraulic fluid bypass and could cause misdirected hydraulic pressure within the servo valve, which could then cause the rudder actuator piston and the rudder to move in a direction opposite to the intended direction. This condition, if not corrected, could result in reduced controllability of the airplane.

The FAA has reviewed and approved Boeing Service Letter 737–SL–27–82–B, dated July 13, 1993, that describes procedures for conducting a test of the main rudder PCU to detect excessive internal leakage of hydraulic fluid. If certain discrepancies are detected, the service letter recommends the replacement of the main rudder PCU.

The FAA also has reviewed and approved Boeing Bulletin 727–27–1185, dated April 15, 1993, that describes procedures for replacement of the main rudder PCU with an improved model that is not subject to the subject leakage problems.

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 periodic tests of the main rudder PCU to detect excessive internal leakage of hydraulic fluid, and correction of discrepancies. This proposed AD also would require the eventual replacement of the main rudder PCU with an improved model; such replacement would constitute terminating action for the periodic tests. The actions would be required to be accomplished in accordance with the service letter and the service bulletin described previously.

There are approximately 2,448 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 729 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 19 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer 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 $761,805, or $1,045 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:

BOEING: Docket 93–NM–79–AD.

Applicability: Model 737 series airplanes; line positions 1 through 2453, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the rudder actuator piston and the rudder to move opposite to the intended direction, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 750 flight hours after the effective date of this AD, perform a test of the main rudder power control unit (PCU), part number 65–44861–2/–3/–4/–5/–6/–7/–8/–9, to detect internal leakage of hydraulic fluid, in accordance with Boeing Service Letter 737–SL–27–82–B, dated July 13, 1993.

(1) If no discrepancy, as described in paragraph B. of the Service Letter, is detected, repeat the test at intervals not to exceed 750 flight hours.

(2) If any discrepancy, as described in paragraph B. of the Service Letter, is detected during any check, prior to further flight, replace the main rudder PCU with a new main rudder PCU having part number 65–44861–11 or 65C37052–2/–3/–4/–5/–6/–7/–8/–9, in accordance with Boeing Service Bulletin 737–27–1185, dated April 15, 1993. Such replacement constitutes terminating action for the tests required by paragraph (a)(1) of this AD.

(b) Within 5 years after the effective date of this AD, replace the main rudder PCU, part number 65–44861–( ), with a new main rudder PCU having part number 65–44861–11 or 65C37052–2/–3/–4/–5/–6/–7/–8/–9, in accordance with Boeing Service Bulletin 737–27–1185, dated April 15, 1993. Such replacement constitutes terminating action for the tests required by paragraph (a)(1) of this AD.

(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, provided that the airplane has not failed the internal leakage test required by this AD.

Issued in Renton, Washington, on August 9, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19622 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–100–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 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 Fokker Model F28 Mark 0100 series airplanes. This proposal would require installation of a doubler assembly on the forward partial pressure bulkhead. This proposal is prompted by fatigue testing in which cracking was found in the area of the avionics cooling outlet valve fitting. The actions specified by the proposed AD are intended to prevent cracking and subsequent reduced structural capability of the partial pressure bulkhead, which could result in decompression of the airplane.

DATES: Comments must be received by October 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–100–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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; 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–100–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–100–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that, during fatigue testing conducted on a Fokker Model F28 Mark 0100 test airplane, cracks were found in the

forward partial pressure bulkhead in the area of the avionics cooling outlet valve fitting. Cracking in this area could reduce the structural capability of this bulkhead. If the bukhead fails, decompression of the airplane could occur.

Fokker has issued Service Bulletin SBF100–53–052, dated January 17, 1992, that describes procedures for installing a doubler assembly to reinforce the forward partial pressure bulkhead at the avionics cooling outlet valve fitting, and at the cargo bay outlet valve fitting, if applicable. The RLD classified this service bulletin as mandatory and issued Dutch Airworthiness Directive BLA 92–029, dated February 21, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installing a doubler assembly to reinforce the forward partial pressure bulkhead. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 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 $2,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $46,155, or $2,715 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:

FOKKER: Docket 93–NM–100–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 to 11286 inclusive, 11289, 11291, 11292, 11293, 11295, 11297, 11300, 11303, 11306, and 11308; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and reduced structural capability of the forward partial pressure bulkhead and subsequent decompression of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight cycles, or within 3 months after the effective date of this AD, whichever occurs later, install a doubler assembly on the forward partial pressure bulkhead in accordance with Fokker 100 Service Bulletin SBF100–53–052, dated January 17, 1992.

(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. 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 9, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19623 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–91–AD]

Airworthiness Directives; de Havilland, Inc., Model DHC–8–311 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 de Havilland, Inc., Model DHC–8–311 series airplanes. This proposal would require repetitive inspections to detect fatigue-related cracking on the rear face of the underwing fairing angles, and replacement of cracked parts. A terminating action is also provided, which, if accomplished, would eliminate the need for the proposed repetitive inspections. This proposal is prompted by a report indicating that, during manufacture, a batch of titanium fairing angles was improperly reworked, resulting in reduced fatigue durability. The actions specified by the proposed AD are intended to prevent failure of the underwing fairing angles, which could result in reduced structural integrity of the wing-to-fuselage attachment.

DATES: Comments must be received by October 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–91–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 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.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, 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:

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–91–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–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland, Inc., Model DHC–8–311 series airplanes. Transport Canada Aviation advises that reports have been received indicating that, during manufacture, a batch of titanium fairing angles was improperly reworked, by use of a procedure that entailed weld-filling of three fastener holes and redrilling the holes in different locations, resulting in reduced fatigue durability. The welds were made with commercially pure titanium, which has a hardness only one-third that of the angle material. Additionally, there is evidence that, in some cases, holes may not have been fully plugged by the weld operation, resulting in increased geometric stress. This condition, if not corrected, could result in failure of the left- and right-hand underwing fairing angles, which could subsequently result in reduced structural integrity of the wing-to-fuselage attachment.

De Havilland, Inc., has issued Service Bulletin S.B. A8–53–46, Revision 'A', dated May 25, 1993, that describes procedures for repetitive visual inspections to detect fatigue-related cracking on the rear face of the left- and right-hand underwing fairing angles (wing-to-angle attachment fittings). Based upon fatigue testing, the manufacturer recommends that the initial inspection be conducted prior to the accumulation of 6,830 total landings on the airplane. The service bulletin also describes procedures for replacement of cracked fairing angles with new, non-reworked fairing angles that have increased fatigue durability. Installation of these non-reworked fairing angles eliminates the need for the visual inspections. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–93–10, dated May 26, 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, the 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, the proposed AD would require repetitive detailed visual inspections to detect fatigue-related cracking on the rear face of the left- and right-hand underwing fairing angles (angle-to-angle wing attachment fittings), and replacement of cracked fairing angles with new, non-reworked fairing angles. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The proposed AD would also provide an optional terminating action, which consists of replacement of the currently installed fairing angles with new, non-reworked fairing angles, having increased fatigue durability. If accomplished, this replacement would eliminate the need for the repetitive detailed visual inspections required by this AD.

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $55 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:

De Havilland, Inc.: Docket 93–NM–91–AD.

Applicability: Model DHC–8–311 series airplanes, serial numbers 240 through 279 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the left- and right-hand underwing fairing angles, which could result in reduced structural integrity of the wing-to-fuselage attachment, accomplish the following:

(a) Prior to the accumulation of 6,830 total landings, or within 100 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking on the rear face of the left- and right-hand underwing fairing angles, having part number 85350927, in accordance with de Havilland, Inc., Service Bulletin S.B. A8–53–46, Revision 'A', dated May 25, 1993.

(1) If no cracked fairing angle is found, repeat the inspection thereafter at intervals not to exceed 6,930 landings, in accordance with the service bulletin.

(2) If any cracked fairing angle is found, prior to further flight, replace the cracked fairing angle with a new, non-reworked fairing angle, having part number 85350927–107SP or 85350927–108SP, in accordance with the service bulletin.

(b) Replacement of the currently-installed left- and right-hand underwing fairing angles with new, non-reworked fairing angles, having part number 85350927–107SP or 85350927–108SP, in accordance with de Havilland, Inc., Service Bulletin S.B. A8–53–46, Revision 'A', dated May 25, 1993, constitutes terminating action for the repetitive inspection requirement of paragraph (a)(1) of this AD.

(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, 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.

(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 9, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19621 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–75–AD]

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that currently requires repetitive inspections to detect loose, missing, or failed rivets in the fuselage attachment fitting area of the rear spar web of the horizontal stabilizer, and repair, if necessary. This action would revise the inspection procedure required by the existing AD. This proposal is prompted by data indicating that the inspection procedure must be revised to require that the rear spar web is inspected at its aft face. The actions specified by the proposed AD are intended to prevent loss of the structural integrity of the horizontal stabilizer attachment to the fuselage.

DATES: Comments must be received by October 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–75–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 Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; 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–75–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–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 29, 1992, the FAA issued AD 93–01–06, Amendment 39–8460 (58 FR 6085, January 26, 1993), to require repetitive inspections to detect loose, missing, or failed rivets in the fuselage attachment fitting area of the rear spar web of the horizontal

stabilizer, and repair, if necessary. That action was prompted by reports of failure of rivets connecting the stabilizer rear spar web to the fuselage attachment fittings due to vibration of the tailplane during takeoff. The requirements of that AD are intended to prevent loss of the structural integrity of the horizontal stablizer attachment to the fuselage.

The existing AD requires repetitive inspections of the rear spar web at its forward face. Recently, the FAA has received data indicating that these inspections must be accomplished by inspecting the rear spar web at its aft face, where the rivets can be seen easily. This inspection procedure is described in Shorts SD3–60 Service Bulletin SD360–55–16, dated April 1988. Further, an incorrect modification number was cited inadvertently in the existing AD.

Failure of the rivets connecting the stabilizer rear spar web to the fuselage attachment fittings, if not detected and corrected, could result in loss of structural integrity of the horizontal stabilizer-to-fuselage attachment and reduced life of the tailplane.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, 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 supersede AD 93–01–06 to require repetitive inspections to detect loose, missing, or failed rivets in the fuselage attachment fitting area of the aft face of the rear spar web of the horizontal stabilizer, and repair, if necessary. The actions would be required to be accomplished in accordance with Shorts SD3–60 Service Bulletin SD360–55–16, dated April 1988.

This AD would also change a modification number that was cited incorrectly in the existing AD.

The FAA estimates that 51 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $22,440, or $440 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 removing amendment 39–8460 (58 FR 6085, January 26, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Short Brothers, PLC: Docket 93–NM–75–AD. Supersedes AD 93–01–06, Amendment 39–8460.

Applicability: Model SD3–60 series airplanes; serial numbers SH3601 through SH3691, inclusive, and SH3694; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the structural integrity of the horizontal stabilizer attachment to the fuselage, accomplish the following:

(a) Perform a visual inspection at the aft face of the rear spar web-to-boom riveting, top and bottom, between the fuselage attach fittings at 12.5" left and right of the airplane center line to detect loose, missing, or failed rivets in accordance with Shorts SD3–60 Service Bulletin SD360–55–16, dated April 1988, prior to the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable. Repeat the inspection thereafter at intervals not to exceed 1,000 landings.

(1) For airplanes on which the inspections (at the forward face of the rear spar web-to-boom riveting) required by AD 93–01–06, amendment 39–8460, have been accomplished previously and on which Modification 7948 has not been accomplished: Within 1,000 landings after the last inspection accomplished in accordance with AD 93–01–06, or within 100 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the inspections required by AD 93–01–06 have not been accomplished previously and on which Modification 7948 has not been accomplished: Inspect prior to the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD, as applicable.

(i) For airplane serial numbers SH3680 through SH3691 inclusive, and SH3694; and for airplanes affected by this AD that have only used a 15-degree takeoff flap setting since before or upon reaching 5,000 landings: Prior to the accumulation of 12,000 total landings, or within 100 landings after the effective date of this AD, whichever occurs later.

(ii) For airplanes other than those affected by paragraph (a)(2)(i) of this AD: Prior to the accumulation of 8,000 total landings, or within 100 landings after the effective date of this AD, whichever occurs later.

(b) If any defective rivet is found as a result of any inspection required by this AD, prior to further flight, repair in accordance with part II of Shorts SD3–60 Service Bulletin SD360–55–16, dated April 1988. Following that repair, continue to perform the repetitive inspections required by paragraph (a) of this AD.

(c) Modification of the horizontal stabilizer spar webs (Modification 7948) in accordance with Shorts SD3–60 Service Bulletin SD360–55–12, Revision 2, dated November 1986, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

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

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

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

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

Issued in Renton, Washington, on August 10, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19613 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Extension of public comment period.

SUMMARY: OSM is announcing receipt of a request for an extension of the comment period pertaining to a previously proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas rules pertaining to the mining of coal incidental to the extraction of other minerals; termination of jurisdiction; definitions; employee financial interests; lands unsuitable procedures; permitting procedures; coal exploration; geological and hydrologic information, reclamation plans, and hydrologic balance standards; maps and plans; transportation facilities and roads; alluvial valley floors; archaeological resources; approval of permits; bonding requirements; use of explosives and blaster training and certification; backfilling and grading; coal processing waste disposal; protection of fish and wildlife and related environmental values; revegetation success; and individual civil penalties. Texas also proposed minor changes in wording, numbering, and punctuation of its rules. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., c.d.t., August 20, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711. Telephone: (512) 463–6900

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning Texas' program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment and Request for Extension of Comment Period for Proposed Amendment

By letter dated May 13, 1993 (Administrative Record No. TX–551), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to letters dated May 20, 1985; June 9, 1987; October 20, 1988; February 7, 1990; and February 21, 1990 (Administrative Record Nos. TX–358, TX–388, TX–417, TX–472, and TX–476) that OSM sent to Texas in accordance with 30 CFR 732.17(c) and in response to the required program amendments at 30 CFR 943.16 (k) through (q).

OSM published a notice in the June 21, 1993, **Federal Register** (58 FR 33785) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. TX–556). The public comment period would have closed July 21, 1993. However, by letter dated July 16, 1993, the Texas Mining and Reclamation Association requested a 30-day extension of time in which to review and possibly provide comments on the proposed amendment (Administrative Record No. TX–563). In response to this request, OSM is extending the comment period to August 20, 1993.

The provisions of the Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 that Texas proposes to amend are discussed below.

(1) Mining of Coal Incidental to the Extraction of Other Minerals

(a) At TCMR 700.002(b)(4), Texas proposes to require that the incidental extraction of coal will be conducted in accordance with the rules proposed under Part 702.

(b) At TCMR Part 702, Texas proposes to add specific regulations concerning the scope, definitions, application requirements and procedures, contents of application for exemption, public availability of information, requirements for exemption, conditions of exemption and right of inspection and entry, stockpiling of minerals, revocation and enforcement, and reporting requirements as they pertain to the exemption for coal extraction incidental to the extraction of other minerals.

(c) At TCMR 787.222(a), Texas proposes to provide an applicant for exemption under Part 702 opportunity for a hearing on the Texas Railroad Commission's (Commission) decision.

(2) Termination of Jurisdiction

At TCMR 700.002(f), Texas proposes to add a rule that the Commission may terminate jurisdiction over a surface coal mining and reclamation operation when all requirements have been completed or all bond has been released and may reassert jurisdiction if fraud, collusion, or misrepresentation have been demonstrated.

(3) Definitions

(a) At TCMR 701.008(4), Texas proposes to revise the definition of "affected area" to mean any land or water surface which is used to facilitate

or which is physically altered by surface coal mining and reclamation operations.

(b) At TCMR 701.008(16), Texas proposes to define the term "coal mine waste" to include coal processing waste and underground development waste.

(c) At TCMR 701.008(19), Texas proposes to change the definition of "coal processing waste" by deleting specific requirements for the waste and including all earth materials separated from the coal and wasted during cleaning, concentrating, or other processing or preparation of coal.

(d) At TCMR 701.008(71), Texas proposes to revise the definition of "road" by deleting requirements for pioneer and construction roadways and by specifically excluding from the definition ramps and routes of travel within immediate mining or disposal areas.

(e) At TCMR 705.011(2), Texas proposes to revise the definition of "coal mining operation" to indicate that developing, producing, preparing, and loading of coal individually constitute a coal mining operation.

(f) At TCMR 705.011(3), Texas proposes to revise the definition of "employee" by deleting redundant language.

(4) Employee Financial Interests

(a) At TCMR 705.010(a)(3), Texas proposes to require the Commissioners to resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the Director of the Surface Mining and Reclamation Division who is responsible for initiating action to impose the penalties of SMCRA.

(b) At TCMR 705.010(c), Texas proposes to require that members of advisory boards and commissions who perform a function under the Texas Surface Coal Mining and Reclamation Act (Act) shall recuse themselves from proceedings that may affect their financial interests.

(c) At TCMR 705.013(a), .014(a), .015(a), and .016(a), Texas proposes to require that members of advisory boards and commissions who perform a function under the Act must file a financial interest statement.

(d) At TCMR 705.014(b), Texas proposes to require that new employees and new members of advisory boards and commissions must file a financial interests statement within 60 days of appointment unless the appointment date is within 60 days of February 1. Texas also proposes to delete TCMR 705.014(c), which required no subsequent annual filing if the annual filing date occurred within 2 months of the initial filing.

(5) Lands Unsuitable Procedures

At TCMR 761.072(b)(2), Texas proposes to require notification of the National Park Service or U.S. Fish and Wildlife Service of requests for determinations of valid existing rights within boundaries of those agencies' jurisdictions, granting 30 days for response (with the options of granting a 30-day extension), and allowing the Commission the option of acting without a response if none was received by the end of the stated response time.

(6) Permitting Procedures

At TCMR 770.101, Texas proposes to reinstate definitions of "applicant," "application," "complete application," "principal shareholder," "property to be mined," and "violation notice." These definitions had been inadvertently omitted in a previous rulemaking.

(7) Coal Exploration

(a) Texas proposes to add a new section TCMR 776.111(a)(3)(E) that requires an application for Commission approval to conduct coal exploration activities to include a description of measures to be taken to comply with applicable coal exploration performance standards.

(b) At TCMR 815.327(a), Texas proposes to revise the requirements pertaining to the protection of critical habitats during coal exploration activities.

(c) At TCMR 815.328, Texas proposes to revise the coal exploration performance standards rules by adding requirements for a permit in relation to coal exploration and testing. The new language states that no permit is required if the use or sale of the coal extracted is for testing purposes. New sections were added specifying what the exploration application must contain.

(8) Geologic and Hydrologic Information, Reclamation Plans, and Hydrologic Balance Standards

(a) At TCMR 779.127 (b) and (c), Texas proposes to specify what results from the analysis of geologic samples must be included in the application and to allow the Commission to require the applicant to provide additional geologic information, if necessary.

(b) At TCMR 779.128(a)(4) and 783.174(a)(4), Texas proposes to modify the ground water information requirement to specify minimum parameters for analysis of the quality of subsurface water.

(c) At TCMR 779.129(b)(2) and 783.175(b)(2), Texas proposes to modify its rules on surface water information to (1) allow specific conductance as an option rather than total dissolved solids; (2) require more detail in subsection (iii) concerning the inclusion of alkalinity information; and (3) limit the requirement for providing acidity and alkalinity information so that the information is required only when there is a potential for acid drainage.

(d) At TCMR 780.146 (b) and (c), and 784.188 (b) and (c), Texas proposes to (1) clarify the methodologies that may be used for water quality analysis, (2) require water quality descriptions to include dissolved iron, (3) require information on existing wells, springs, and other ground water resources, and (4) require that supplemental data shall be used to plan remedial and reclamation activities.

(e) At TCMR 780.148(c) and 784.190(c), Texas proposes to modify its permanent and temporary impoundment rules by replacing subparagraph (2) with the more specific requirement that ponds meeting the size criteria of the Mine Safety and Health Administration (MSHA) must comply with appropriate rules and adding subparagraph (3) in which a minimum static safety factor is imposed on ponds not meeting MSHA size criteria whose failure could cause loss of life or serious property damage.

(f) At TCMR 783.173, Texas proposes to add new sections (d) and (e) to provide, respectively, for analysis of the engineering properties of the stratum immediately above and below the coal and for additional analyses if the Commission determines that more information is necessary.

(g) At TCMR 816.342(a)(4), Texas proposes to delete language that limits the findings that are required for approval of stream channel diversions to impacts within stream buffer zones.

(h) At TCMR 816.344 (g), (h), (i), and (k), and 817.514 (g), (h), (i), and (k), Texas proposes to provide alternative designs for sedimentation pond spillways. Section (g) allows for a single specifically designed spillway as an alternative to designs with combination principal and emergency spillways and defines the design event for the single spillway. Section (h) provides an alternative to spillways by allowing ponds that rely entirely on storage for controlling sedimentation. Section (i) redefines the design event for ponds using a combination principal and emergency spillway. Section (k) provides that the settled embankment shall be one foot above the water surface in the pond with the emergency spillway or single spillway flowing at design depth.

(i) At TCMR 816.344(r) and 817.514(r) Texas proposes to require additional sedimentation pond design

requirements when the pond impounds water or sediment to an elevation of five feet or more above the upstream toe of the structure and has a storage volume of 20 acre-feet or more. Texas also proposes to require ponds meeting these criteria to safely pass the 100-year, 6-hour event and to have a minimum seismic safety factor of 1.2.

(j) At TCMR 816.347(a)(1) and 817.517(a)(1), Texas proposes to require that permanent and temporary impoundments meeting the size criteria of 30 CFR 77.216(a) shall be designed to meet the requirements of that regulation. The designs must be submitted as part of the permit application.

(k) At TCMR 816.347(a)(4) and 817.517(a)(3), Texas proposes to modify its rules on permanent and temporary impoundments by adding a section to describe requirements for seismic, static, and seepage safety factors.

(l) At TCMR 816.347(a)(5) and 817.517(a)(5), Texas proposes to add subsections to the rules on permanent and temporary impoundments to describe foundation and abutment stability designs and information requirements.

(m) At TCMR 816.347(a)(6) and 817.517(a)(6), Texas proposes to add subsections to the rules on permanent and temporary impoundments to provide for slope protection.

(n) At TCMR 816.347(a)(7) and 817.517(a)(7), Texas proposes to add subsections to the rules on permanent and temporary impoundments to require faces of embankments and surrounding areas to be vegetated, riprapped, or otherwise stabilized.

(o) At TCMR 816.347(b)(8) and 817.517(b)(8), Texas proposes to revise its rules on permanent impoundments to allow for alternatives in spillway designs and to redefine the design events.

(p) At TCMR 816.347(c) and 817.517(c), Texas proposes to require that for permanent and temporary impoundments that use combination principal and emergency spillways there shall be no flow through the emergency spillway resulting from the 10-year, 6-hour precipitation event.

(q) At TCMR 816.347(d) and 817.517(d), Texas proposes to modify its rule on temporary impoundments to correct the references to other rules and to add references to sections .347(b)(8) and .517(b)(8).

(r) At TCMR 816.347(e) and 917.517(e), Texas proposes to modify its rules on permanent and temporary impoundments to add the requirement that slopes shall be designed to be stable in all cases.

(s) At TCMR 816.347(i) and 817.517(i), Texas proposes to add a section to its temporary and permanent impoundment rules to require regular inspections of impoundments during construction and annual inspections until removal or bond release.

(t) At TCMR 816.347(k) and 817.517(k), Texas proposes to add certification requirements for temporary and permanent impoundments meeting the size requirements of 30 CFR 77.216(a).

(u) At TCMR 816.350(b) and 817.519(b), Texas proposes to replace subsection (b)(1) to require permit applications to contain a surface water monitoring plan based on the PHC and the baseline analyses of hydrologic, geologic, and other information contained in the permit application. Monitoring plans must also be based on the postmining land use and the effluent limitations from 40 CFR Part 434.

(v) At TCMR 816.355(a), Texas proposes to revise the allowance for disturbance to stream buffer zones. Such disturbance can only be authorized if the Commission finds that there will be no adverse impact on the water quantity and quality or other environmental resources of the stream and, if a stream channel diversion is planned, it must comply with appropriate standards.

(w) At TCMR 817.509(a), Texas proposes to clarify the hydrologic balance requirements for underground mining activities.

(x) At TCMR 817.522(f), Texas proposes to require the applicant to demonstrate that any discharge into underground mine workings resulting from underground mining activities will minimize disturbance to the hydrologic balance.

(9) Maps and Plans

(a) At 780.142(c) and 784.197(c), Texas proposes to add a reference to the appropriate rules for the requirements for maps and plans and to delete the requirement that maps, plans, and cross sections for sediment ponds and spoil disposal facilities must be prepared only by a registered professional engineer.

(b) At TCMR 780.142(d) and 784.197(d), Texas proposes to require maps and plans for each support facility and to require that the maps and plans comply with applicable support facility requirements.

(10) Transportation Facilities and Roads

(a) At TCMR 780.154 and 784.198, Texas proposes to modify its transportation facility requirements by adding (1) subsection (a)(6) in which fords of streams must have approved drawings; (2) requirements for specifications in subsection (a)(7) in which each nonpermanent road must have plans for removal and reclamation; and (3) a requirement in section (b) for detailed plans and specifications for Class I and II roads to be prepared by, or under the supervision of, and certified by a qualified registered professional engineer.

(b) At TCMR 816.401(b) and 817.570(b), Texas proposes to add to its rules on location of Class I roads references to appropriate performance standards and to require that roads shall be located to minimize downstream sedimentation and flooding.

(c) At TCMR 816.402(d)(9) and 817.571(d)(9), Texas proposes to require that the minimum safety factor for Class I road embankments shall be 1.3, or greater as the Commission may specify.

(d) At TCMR 816.405 and 817.574, Texas proposes to revise its Class I road maintenance rules by changing "design standards" requirements in section (a) to "performance standards" requirements and deleting in section (c) the language that the road shall not be used until reconstruction is completed. Section (c) now states that Class I roads shall be repaired as soon as practicable.

(e) At TCMR 816.406(a)(4) and 817.575(a)(4), Texas proposes to revise its Class I road restoration rules to require removal of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.

(f) At TCMR 816.408(b) and 8187.577(b), Texas proposes to add to its rules on location of Class II roads references to appropriate performance standards and to require that roads shall be located to minimize downstream sedimentation and flooding.

(g) At TCMR 816.409(d)(9) and 817.578(d)(9), Texas proposes to require that the minimum safety factor for Class II road embankments shall be 1.3, or greater, as the Commission may specify.

(h) At TCMR 816.412 and 817.581, Texas proposes to revise its Class II road maintenance rules by changing "design standards" requirements in section (a) to "performance standards" requirements. Section (b) requires prevention of erosion, siltation, and air pollution, including road dust and dust from other exposed surfaces. This section also contains measures to be used to prevent air pollution. Section (c) was added to state that damaged roads shall be repaired as soon as practical.

(i) At TCMR 816.413(a)(4) and 817.582(a)(4), Texas proposes to revise its Class II road restoration rules to require the removal of road surfacing materials that are incompatible with the

postmining land use and revegetation requirements.

(j) At TCMR 816.415(b) and 817.584(b), Texas proposes to add to its rules on location of Class III roads references to appropriate performance standards and to require that roads shall be located to minimize downstream sedimentation and flooding.

(k) At TCMR 816.419 and 817.588, Texas proposes to revise its Class III road maintenance rules by adding the statement that maintenance is to prevent erosion, siltation, and air pollution, including road dust and dust from other exposed surfaces. This section also contains measures to be used to prevent air pollution. Section (c) was added to state that damaged roads shall be repaired as soon as practical.

(l) At TCMR 816.420(d) and 817.589(d), Texas proposes to revise its Class III road restoration rules to require the removal of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.

(11) Alluvial Valley Floors

At TCMR 785.202(b)(1)(i) and (b)(3), Texas proposes to replace the language requiring baseline data on preserving characteristics of alluvial valley floors with more specific language requiring baseline data on the essential hydrologic functions of the alluvial valley floor that might be affected.

(12) Archaeological Resources

At TCMR 786.210(a)(3), Texas proposes to require that information contained in a permit application on the nature and location of archaeological resources must be kept confidential as required by the Archaeological Resources Protection Act of 1979.

(13) Approval of Permits

(a) At TCMR 786.216(e), Texas proposes to amend the criteria for permit approval to give the Commission the discretion to determine whether additional protection measures are required by the National Historic Preservation Act.

(b) At TCMR 786.216(p), Texas proposes to require the Commission to determine that the applicant has, if applicable, satisfied the requirements for approval of long-term intensive agriculture postmining land use.

(c) At TCMR 786.220(d), Texas proposes to modify its rules on right-of-entry conditions on permits by replacing "permittee" with "operator" in designating who shall pay all reclamation fees.

(14) Bonding Requirements

At TCMR 800.301(b)(2), Texas proposes to require that individual bond increments must be of sufficient size and configuration for efficient reclamation operations should reclamation by the Commission become necessary.

(15) Use of Explosives and Blaster Training and Certification

(a) At TCMR 816.330(f) and 817.500(f), Texas proposes to revise its signs and markers rules to also require blasting signs.

(b) At TCMR 816.357(c) and 817.526(c), Texas proposes to modify its use of explosives rules to require that a blaster and at least one other person are present at the firing of the blast.

(c) At TCMR 816.357(d) and 817.526(d), Texas proposes to revise its blast design standards to include additional kinds of buildings and facilities within 500 or 1000 feet of any blasting operations.

(d) At TCMR 816.358(a) and 817.527(a), Texas proposes to modify its use of explosives rules to broaden the preblast survey area from within ½ mile of the blasting site to within ½ mile from any part of the permit area.

(e) At TCMR 816.360(a) and 817.528(a), Texas proposes to require that the blasting design include limitations based on minimum distances of 500 to 1000 feet from certain specified buildings and facilities and at TCMR 816.360 (h) and (i) and 817.528 (h) and (i) to correct paragraph references.

(f) At TCMR 816.362(d) and 817.530(d), Texas proposes to correct references to other regulations.

(g) At TCMR 817.526(b), Texas proposes to require underground mining activities to comply with applicable State and Federal laws and regulations in the use of explosives.

(h) At TCMR 850.703(b)(1)(A), Texas proposes to revise its blaster training and certification rules to add the requirement that training courses must cover storage and transportation of explosives as well as use.

(i) At TCMR 850.704(b), Texas proposes to revise its blaster training and certification rules by adding to the statement of recognition of other training courses that those courses must include the completion of the list of topics listed in section (a).

(j) At TCMR 850.706(a), Texas proposes to revise its blaster training and certification rules to add the requirement that the examination must cover storage and transportation of explosives as well as use.

(16) Backfilling and Grading

At TCMR 816.385(b)(3) and 817.552(b)(3), Texas proposes to modify the backfilling and grading rules to delete the option to approve outslopes exceeding 1v:2h.

(17) Coal Processing Waste Disposal

(a) At TCMR 816.376(d), Texas proposes to modify its coal processing waste dams and embankments rules to specifically require impoundment structures to meet the criteria of 30 CFR 77.216(a) and to redefine the design event for combination spillways to be the probable maximum precipitation of a 6-hour precipitation event or greater as specified by the Commission.

(b) At TCMR 816.378(a) and (c) and 817.545(a) and (c), Texas proposes to correct citations of other regulations and to revise the water removal requirements for impounding structures constructed of or impounding coal mine waste.

(c) At TCMR 817.538(c)(3), Texas proposes to modify its coal processing waste dams and embankments rules by deleting the rule allowing for variations for the disposal of dewatered fine coal waste.

(d) At TCMR 817.543, Texas proposes to revise its underground mining coal processing waste dams and embankments rules by adding, in section (b), requirements for the design plans for coal processing waste dams and embankments to contain details on the stability of the structure and the potential impact of acid seepage. Section (c) was added to require each impounding structure constructed of coal mine waste intended to impound coal mine waste to be temporary and to be designed, constructed, and maintained in accordance with Part 817 standards. Section (d) was added to require that the combination of principal and emergency spillways on coal waste impoundments meeting the MSHA requirements at 30 CFR 77.216(a) be able to safely pass the maximum 6-hour precipitation event.

(18) Protection of Fish and Wildlife and Related Environmental Values

At TCMR 816.380(e)(10) and 817.547(e)(10), Texas proposes to modify its protection of fish and wildlife and related environmental values rules to delete the reference to cropland as an alternative postmining land use and to delete the reference to lands diverted from fish and wildlife premining land use.

(19) Revegetation Success

(a) At TCMR 816.395(a) and 817.560(a), Texas proposes to revise its

revegetation success standards rules by adding new language to (1) tie success to the postmining land use, the amount of cover, and the requirements of sections .390 and .391 and (2) to provide standards for success and statistically valid sampling techniques.

(b) At TCMR 816.395(b) and 817.560(b), Texas proposes to revise its revegetation success standards rules by adding new language that more specifically addresses the requirements for various land uses.

(c) At TCMR 816.395(c) and 817.560(c), Texas proposes to revise its revegetation success standards rules by adding new language that describes the period of responsibility required for bond release and includes the approved selective husbandry practices.

(d) At TCMR 816.396 and 817.561, Texas proposes to delete its rules on tree and shrub stocking for forest land by replacing these rules with the new language at TCMR 816.395 and 817.560.

(20) Individual Civil Penalties

(a) At TCMR 846.001(2), Texas proposes to revise its individual civil penalties rules to clarify that the definition of "violation, failure, or refusal" includes conditions of a permit as one of the examples of violations, failures, or refusals.

(b) At TCMR 846.004(c), Texas proposes to revise its civil penalties rules by adding procedures to allow service to be performed by mail or other means consistent with Texas law.

(21) Minor Changes in Wording, Numbering, Punctuation

At various places throughout the proposed amendment, Texas proposes minor changes in wording, numbering, and punctuation to correct, order, and clarify the rules. None of these minor changes has an effect on the substantive nature of the rules.

III. Public Comment Procedures

OSM is extending the comment period on the proposed Texas amendment to provide the public additional opportunity to consider the adequacy of the amendment. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of the Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions of proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 6, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–19649 Filed 8–13–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Departmental Offices

31 CFR Part 1

Privacy Act of 1974, as Amended; Exemption of System of Records From Certain Provisions

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, Departmental Offices, Office of Enforcement is proposing to exempt a system of records, the Waco Administrative Review Group Investigation (DO/.207) from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement and investigative purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records. The exemptions are intended to increase the value of the system of records for the factfinding investigation and administrative review performed by the Waco Administrative Review Group so as not to reveal local, state or Federal

law enforcement techniques, sources and methods or affect the ability of law enforcement agencies to prosecute people for criminal wrongdoing.

DATES: Comments must be received no later than September 15, 1993.

ADDRESSES: Comments (preferably in triplicate) must be submitted to the Department of the Treasury, Office of Enforcement, room 4312, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Nichole L. Jenkins, Attorney, Office of the Assistant General Counsel (Administrative & General Law), (202) 622-0450, room 1410, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: As an investigative and law enforcement office, the Office of Enforcement has a wide variety of investigatory responsibilities. As a part of that Office, the Waco Administrative Review Group is being established to conduct a comprehensive investigation of the Bureau of Alcohol, Tobacco & Firearms (BATF) including analyzing whether BATF procedures, policies and practices were adequate and whether they were followed. The Waco Administrative Review Group will collect and store information obtained during the investigation, conducted by the Waco Administrative Review Group, of individuals involved in the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and, where appropriate, disclose this information to other law enforcement agencies which have an interest in this information. Authority for the system is provided by 5 U.S.C. 301; 31 U.S.C. 321.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury is today publishing separately a notice of a system of records, the Waco Administrative Review Group—Treasury/DO.207. This system of records will assist the Office of Enforcement in the proper performance of its functions.

Under 5 U.S.C. 552(a)(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

In addition, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) set forth above.

Accordingly, pursuant to the authority contained in section 1.23(c) of the regulations of the Department of the Treasury (31 CFR 1.23(c)), the Assistant Secretary intends to exempt the Waco Administrative Review Group Investigation from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and 31 CFR 1.23(c). The specific provisions and the reasons for exempting the system of records from each specific provision of 5 U.S.C. 552a are set forth below as required by 5 U.S.C. 552a(j)(2) and (k)(2). As required by Executive Order 12291, it has been determined that this proposed rule is not a "major" rule and, therefore, does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby certified that these regulations will not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of Subpart C is amended by adding the following text immediately preceding the heading THE INTERNAL REVENUE SERVICE:

§ 1.36 Systems exempt in whole or in part from Provisions of 5 U.S.C. 552a and this part.

* * * * *

In accordance with 5 U.S.C. 552a (j) and (k) and § 1.23(c), constituent units of the Department of the Treasury exempt the following systems of records from certain provisions of the Privacy Act for the reasons indicated:

Office of the Assistant Secretary for Enforcement Waco Administrative Review Group Investigation

Notice of Exempt System

(a) *In general.* The Assistant Secretary of the Treasury for Enforcement exempts the system of records entitled "Waco Administrative Review Group Investigation" (Treasury/DO .207) from certain provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(b) *Authority:* 5 U.S.C. 552a(j) and (k); 31 CFR 1.23(c).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. 552a(j)(2), the Assistant Secretary for Enforcement hereby exempts the Waco Administrative Review Group Investigation system of records maintained by the Office of Enforcement, an office reporting to the Assistant Secretary for Enforcement, from the following provisions of the Privacy Act of 1974:

5 U.S.C. 552a(c)(3) and (4);
5 U.S.C. 552a(d)(1), (2), (3) and (4);
5 U.S.C. 552a(e)(1), (2) and (3);
5 U.S.C. 552a(e)(4)(G), (H), and (I);
5 U.S.C. 552a(e)(5) and (8);
5 U.S.C. 552a(f); and
5 U.S.C. 552a(g).

(d) Specific exemptions under 5 U.S.C. 552a(k)(2). To the extent that the exemption under 5 U.S.C. 552a(j)(2) does not apply to the Waco Administrative Review Group Investigation, the Assistant Secretary for Enforcement hereby exempts the Waco Administrative Review Group Investigation system of records from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(2):

5 U.S.C. 552a(c)(3);
5 U.S.C. 552a(d)(1), (2), (3) and (4);
5 U.S.C. 552a(e)(1);
5 U.S.C. 552a(e)(4)(G), (H), and (I); and
5 U.S.C. 552a(f).

(e) *Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2).* (1) 5 U.S.C.

552a (e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the Waco Administrative Review Group Investigation would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Waco Administrative Review Group's ability to carry out its mission, since individuals could (A) take steps to avoid detection, (B) inform associates that an investigation is in progress, (C) learn the nature of the investigation, (D) learn whether they are only suspects or identified as law violators, (E) begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records, or (F) destroy evidence needed to prove the violation, and (G) confer with associates to develop a false and misleading account of events that would deter, delay, or complicate the investigation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the Waco Administrative Review Group Investigation would compromise the Waco Administrative Review Group's ability to provide useful tactical and strategic information to law enforcement agencies and to complete a review of the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993.

(A) Permitting access to records contained in the Waco Administrative Review Group would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by (i) discovering the facts that would form the basis for their arrest, (iii) enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, (ii) using knowledge that criminal or administrative investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance, and (iv) providing them the knowledge to evade investigators' further inquiries.

(B) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection, apprehension or further investigation.

(C) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers might and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal or administrative investigators with valuable information unless they believe that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Office of Enforcement's ability to carry out its mandate.

(D) Furthermore, providing access to records contained in the Waco Administrative Review Group Investigation could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(E) By compromising the law enforcement value of the Waco Administrative Review Group for the reasons outlined in paragraphs (e)(2)(A) through (D) of this paragraph, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Waco Administrative Review Group and thus would restrict the Waco Administrative Review Group's access to information necessary to accomplish its mission most effectively.

(3) 5 U.S.C. 552a (d)(2) (3) and (4), (e)(4)(h) and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules propose to exempt the Waco Administrative Review Group Investigation from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (2) of this paragraph, these provisions should not apply to the Waco Administrative Review Group Investigation.

(4) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules propose to exempt the Waco Administrative Review Group Investigation from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (f)(3) of this section, this provision should not apply to the Waco Administrative Review Group Investigation.

(5) 5 U.S.C. 552a(3) requires an agency to make accounting of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(A) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of the information provided by the Waco Administrative Review Group. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into possible criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection, apprehension or further investigation by altering their operations, by transferring their criminal activities to other geographical areas, by destroying or concealing evidence that would form the basis for arrest, or by developing a false and misleading account of facts that would deter, delay or complicate any investigation.

(B) Moreover, providing accounting to the subjects of investigations would alert them to the fact that the Waco Administrative Review Group has information regarding possible criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Waco Administrative Review Group information-gathering and analysis systems and permit violators to take

steps to avoid detection, apprehension or further investigation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the Waco Administrative Review Group Investigation could compromise the Waco Administrative Review Group's ability to provide useful information to law enforcement agencies, since revealing sources for the information could (A) disclose investigative techniques, systems, methods and procedures, (B) result in threats or reprisals against informers by the subjects of investigations, and (C) cause informers to refuse to give full information to criminal or administrative investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an 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 to be accomplished by statute or executive order. The term "maintain," as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." The application of this provision to the Waco Administrative Review Group Investigation could impair the Waco Administrative Review Group's ability to collect and disseminate valuable law enforcement information.

(A) At the time that the Waco Administrative Review Group collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Waco Administrative Review Group purpose.

(B) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program, establish a critical fact in a chain of events, or reveal other investigative leads or sources.

(C) Not all violations of law discovered by the Waco Administrative Review Group fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Waco Administrative Review Group will have to disclose such violations to other law enforcement agencies, including state, other federal agencies, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, the Waco Administrative Review Group might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Waco Administrative Review Group's attention during the collation and analysis of information in its records.

(D) In order to effectively fulfill its assigned functions, the Waco Administrative Review Group must retain and maintain divergent and diverse information to follow leads, tips, allegations and rumors to an investigative conclusion.

(8) 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 to the Waco Administrative Review Group Investigation would impair the Waco Administrative Review Group's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(A) Most information collected about an individual under criminal or administrative investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his possible criminal activities.

(B) An attempt to obtain information from the subject of an investigation will often alert that individual to the existence of a criminal or administrative investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(C) In certain instances, the subject of a criminal or administrative investigation is not required to supply information to criminal investigators as a matter of legal duty.

(D) During criminal or administrative investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The Waco Administrative Review Group Investigation should be exempted from this provision to avoid impairing the Waco Administrative Review Group's ability to collect and collate investigative, intelligence, and enforcement data.

(A) Confidential sources often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation, or his or her associates know that an investigation is in progress.

(B) If it became known that the undercover officer was assisting in an investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(C) Individuals often feel inhibited in talking to a person representing a law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities.

(D) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(E) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity, or any other activity integral or pertinent to the investigation.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(A) Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the Waco Administrative Review Group would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would

seriously restrict the Waco Administrative Review Group's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during an investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because the Waco Administrative Review Group may not have the expertise with which to make such determinations.

(B) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, prove not to be so as an investigation progresses. In addition, application of this provision could seriously impede investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during the investigation.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The Waco Administrative Review Group should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelations of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The Waco Administrative Review Group should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules propose to exempt the Waco Administrative Review Group Investigation, since there should be no civil remedies for failure to comply with provisions from which the Waco Administrative Review Group is exempted. Exemption from this provision will also protect the Waco Administrative Review Group from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

(f) Exempt information included in another system. Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a (j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

Comments

Consideration will be given to any written comments timely submitted to the Office of Enforcement. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), 103.11(b), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Departmental Disclosure Office, Department of the Treasury, 1500 Pennsylvania Ave., NW., room 1054, Washington, DC.

After consideration of the comments received, notice will be given concerning the exempt status of this system of records. If the Office of Enforcement finally exempts as herein proposed, a final rule amending 31 CFR 1.36 will be published.

Dated: July 29, 1993.

Deborah M. Witchey,

Acting Assistant Secretary (Management).

Dated: July 28, 1993.

Ronald K. Noble,

Assistant Secretary for Enforcement.

[FR Doc. 93–19692 Filed 8–13–93; 8:45 am]

BILLING CODE 4810–25–M

Notices

Federal Register
Vol. 58, No. 156
Monday, August 16, 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

Animal and Plant Health Inspection Service

[Docket No. 93–100–1]

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 four 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 number	Permittee	Date issued	Organisms	Field test location
93–074–07	Upjohn Company	07–19–93	Cantaloupe plants genetically engineered to express resistance to certain fungal plant pathogens.	California.
93–077–03	Upjohn Company	07–20–93	Lettuce plants genetically engineered to express resistance to certain fungal plant plant pathogens.	Arizona, California.
93–085–03	Upjohn Company	07–20–93	Squash plants genetically engineered to express resistance to certain fungal plant pathogens.	Georgia.
93–183–01, renewal of permit 92–156–01, issued on 09–23–92.	Calgene, Incorporated	07–21–93	Rapeseed plants genetically engineered to express sense or anti-sense desaturase genes, a thioesterase gene, and a reductase gene, for oil modification.	Georgia.

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 10th day of August 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–19596 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 93–099–1]

Receipt of Permit Applications 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 two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications 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 applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
93–193–01R	Calgene, Incorporated	07–12–93	Rapeseed plants genetically engineered to express sense or anti-sense desaturase genes, a thioesterase gene, and a reductase gene, for oil modification.	Alabama, South Carolina.
93–203–01R, renewal of permit 92–156–01, issued on 09–23–92.	Calgene, Incorporated	07–22–93	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 10th day of August 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–19595 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–34–P

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1994 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1994 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be $88.00 per license.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Trade Analysis Division, room 5531-South Building, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–2916.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Licensing Group, Import Policies and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture (the "Licensing Authority") and the U.S. Customs Service.

Regulations at 7 CFR 6.33(a) provide that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total cost to the Department of Agriculture of administering the licensing system during the calendar year preceding the year for which the fee is to be charged, divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

Regulations at 7 CFR 6.33(b) provide that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 1994 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1993 has been determined to be $317,986. Of this amount, $145,486 represents the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1993 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled $111,650; a proportionate share of the supervisory costs devoted directly to administering the licensing system equaled $33,836); $87,250 represents the total computer costs to monitor and issue import licenses during 1993; and $85,250 represents other miscellaneous costs, including travel, postage, publications, forms, and an ADP system contractor.

The average number of licenses issued per year for the three years immediately preceding 1994 has been determined to be 3,628. Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1994 calendar year, in accordance with the regulations codified at 7 CFR 6.20–6.34, will be $88.00 per license.

Issued at Washington, DC, the 21st day of July, 1993.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 93–19598 Filed 8–13–93; 8:45 am]

BILLING CODE 4310–10–M

Forest Service

Exemption of Lowell Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover disease-, insect-, and fire-killed timber is exempted from appeal under provisions of 36 CFR part 217.

SUMMARY: During the summer of 1992, substantial mortality was detected outside cutting units in the Cougar Creek drainage. In addition, during the spring of 1993, 3 acres of timber adjacent to several harvest units of the Lowell Creek Timber Sale, in the Lowell and Pete King Creek drainages, were killed during a prescribed burn within the sale area. In 1992 the Lochsa District Ranger, Clearwater National Forest, proposed the salvage harvest of the dead and dying trees. The District Ranger has determined, through environmental analysis documented in the Decision Memo, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged natural resources. Salvage of commercial sawtimber within the study area must be accomplished quickly to avoid deterioration of sawtimber, to reduce the risk of catastrophic wildfires and to reduce the effects of endemic and epidemic pathogens within the study area.

EFFECTIVE DATE: Effective on August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Jon B. Bledsoe, District Ranger; Lochsa Ranger District, Clearwater National Forest; Route 1 Box 398; Kooskia, ID 83539. Telephone: 208–926–4275.

SUPPLEMENTARY INFORMATION: Recent drought conditions, combined with maturing timber stands, have increased the number of trees killed by insect and disease in this area. Also, approximately 3 acres of timber outside the harvest units were killed during the burn. In June 1992, the Lochsa District Ranger proposed the salvage harvest of the trees affected by insect and disease. After additional trees were killed during the prescribed burning in 1993, the District Ranger expanded the study area to include the fire-killed timber. All dead trees are within lands designated suitable for timber management and are assigned to Management Area C4 (Clearwater Forest Plan, September 1987). This management area is to be managed for big game winter range as well as timber production. This proposal was designed to accomplish the following: (1) Salvage merchantable timber products before they deteriorate in value, (2) reduce wildfire hazard by reducing fuel loading, and (3) rehabilitate salvaged areas with tree species resistant to the root rot and bark beetles.

An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (No Action) and salvage and rehabilitate (Proposed Action). The selected alternative would harvest an estimated 500 MBF of dead and dying timber from approximately 183 acres. All salvage areas are accessible from existing roads. No new road construction or reconstruction will occur in conjunction with this project. This salvage timber sale is designed to accomplish the objectives as quickly as possible to reduce the fuel loading to minimize the risk of wildfire, to replace the dead and dying trees with tree species resistant to pathogens predominant in the area, and to recover the volume and value of the timber involved before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR part 217.4(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System land and recovery of Forest Resources from natural disasters or other natural phenomena, such as wildfires, * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis and the District Ranger's Project File and Decision Memo, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 9, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–19617 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exempt Decision for Wally Salvage and Wise Man Salvage Timber Sales From Appeal, Colville National Forest, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decisions to implement the Wally Salvage and the Wise Man Salvage Timber Sales on the Kettle Falls Ranger District of the Colville National Forest are exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Edward C. Schultz, Forest Supervisor, Colville National Forest, 765 South Main, Colville, Washington 99114, or Bruce Bernhardt, Kettle Falls District Ranger, 255 West 11th Street, Kettle Falls, Washington, phone: (509) 738–6111.

SUPPLEMENTARY INFORMATION: In the winter of 1993, there was a windstorm that did extensive damage to several stands of timber on the Kettle Falls Ranger District. Also during 1993, a

small adjacent area, with the wind-damaged timber, was infested with Douglas-fir bark beetle. The proposal covers approximately 114 acres on two timber sale areas. All of the affected areas are within suitable stands for timber management.

In the spring and summer of 1993, stands where timber salvage is authorized, under the Colville National Forest Land and Resource Management Plan, were identified. All of the proposed salvage is located in Management Area 7 (Wood/Forage) where timber production is managed for optimum levels while protecting basic resources.

An interdisciplinary team determined the need to salvage the wind-damaged and insect-infested timber in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 14 inches in diameter. Rapid drying of dead trees results in cracking or "checking", especially of the smaller diameter trees. This "checking" will quickly reduce merchantability as sawlogs.

In spring of 1993, the Kettle Falls District Ranger proposed the salvage harvest of the wind-thrown and insect-infested timber. Analysis was initiated in June 1993, with a letter sent to individuals, State and Federal agencies and other interested parties. This letter discussed the proposed salvage sales. Issues were identified and included: Impacts on recreational sites; maintenance of wildlife habitat; and fuels buildup.

The Wally Salvage will produce about 75,000 board feet of dead or dying timber from 80 acres, while Wise Man Salvage will produce about the same volume, 75,000 board feet, of dead or dying timber, but it will come from 34 acres.

For both salvage sales the following is valid: no trees will be removed that would result in disturbance to riparian areas; areas of highly erodible soils will be avoided in harvest; no new roads will be built; and adequate down woody material and snags will be left; and recreational sites will be protected.

The areas have been surveyed for cultural resources, with no new sites located. A biological evaluation of the areas determined that the proposed projects would have "no effect" on threatened, endangered, or sensitive species of wildlife or plants.

The sales and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume loss and resources damage. Based upon this environmental analysis for these two salvages sales, I have determined that good cause exists to exempt the Wally Salvage and the Wise Man Salvage Timber Sales from administrative appeal (36 CFR part 217). Under this Regulation the following is exempt form appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena * * * such as severe wind * * * when the Regional Forester * * * determines and gives notice in the**Federal Register** that good cause exists to exempt such decisions form review under this part.

After publication of this notice in the **Federal Register** the Decision Memos for the Wally Salvage and the Wise Man Salvage Timber Sales may be signed by the District Ranger. Therefore, these two salvage projects will not be subject to review under 36 CFR part 217.

Dated: August 6, 1993.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 93–19616 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of the Wildcat Bark Beetle Suppression and Recovery Project, Dixie National Forest, Utah.

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that decisions to implement tree baiting, and timber salvage to rehabilitate and recover natural resources from recent mountain pine beetle attack (in the Wildcat area of the Teasdale Ranger District of the Dixie National Forest) are exempted from appeal as per provisions of 36 CFR 217.4(a)(11).

DATES: Effective on August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Marvin R. Turner, District Ranger, Dixie National Forest, P.O. Box 99, Teasdale, Utah 84773, (801) 425–3702.

SUPPLEMENTARY INFORMATION: Several years of drought in southern Utah have reduced soil moisture and added to the weakened condition of large ponderosa pine trees on the Teasdale Ranger District of the Dixie National Forest. Consequently, mountain pine beetle populations have increased.

As part of the effort to rehabilitate and recover timber resources damaged by the insect population buildup, the Teasdale Ranger District has developed a proposal to bait and trap the insects and to further interrupt their life cycles by salvaging insect infected trees. A district ID team has completed the NEPA process to identify issues, develop alternatives and to analyze the effects of implementing proposed recovery activities. This process has resulted in the completion of a categorical exclusion documenting the analysis of the proposed action.

The project area is located approximately 20 miles southeast of Teasdale, Utah, near Utah State Highway 12. The area is approximately 50 acres in size. Approximately 100 trees are dead or dying as a result of bark beetle attack. Mortality has increased substantially within the past year. Additional large trees remain in the stand to support continued population increases. This would result in substantial losses from the standpoint of visual quality, wildlife habitat and forest health. The district is proposing to bait and trap insects within the project area to help break up breeding cycles and reduce future population increases. There is no road construction proposed for the salvage harvest operation.

Management direction for the Wildcat area is established in the Dixie National Forest Land and Resource Management Plan (DNF–LRMP). The DNF–LRMP provides for the removal of salvage timber from lands within the project area. In addition, the plan describes standards and guidelines which must be observed when harvesting timber to protect soil, water, wildlife, visual quality, and other resources. The proposed action for the Wildcat Bark Beetle Suppression and Recovery Project is consistent with the standards and guidelines contained in the DNF–LRMP.

The Regional pathologist and entomologist have analyzed the insect situation and have suggested the recovery process defined in the proposed action. These activities will:

(1) Help break up the insect life cycle;

(2) Prevent further deterioration of visual quality along Utah State Highway 12 (a scenic by way);

(3) Prevent further reductions in wildlife habitat and forest health; and

(4) Prevent increases in fire hazards and fuel loading.

The Forest Supervisor has determined, through scoping and environmental analysis that there is good cause to expedite this project.

The decision for the Wildcat recovery project may be implemented after publication of this notice in the Federal **Register** and after the decision document has been signed by the responsible official. If the project is delayed because of appeals it is likely that beetle flight will occur before tree baiting and tree salvage can be implemented. This could result in the

loss of many additional large trees within the area. Volume and value lost due to insect damage could easily double within the next few months (value relates to both sawtimber deterioration and loss of visual quality).

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision relating to tree baiting, salvage harvest and restoration of lands affected by mountain pine beetles in the Wildcat project area of the Teasdale Ranger District, Dixie National Forest. The categorical exclusion discloses the effects of the proposed action on the environment and addresses the issues resulting from the proposal.

Dated: August 6, 1993.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA, Forest Service.

[FR Doc. 93–19643 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Flat Black Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timer sale project to recover insect-killed, blown-down, and fire-killed timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic, an escaped prescribed burn, and a windstorm on the Fortine District, Kootenai National Forest, have killed or damaged timber in the Advent Creek drainage. In 1993, the Fortine District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Decision Memo and project file for the Flat Black Salvage Sale, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber, to reduce the risk of catastrophic wildfire, and to reduce spruce bark beetle infestations that could damage adjacent stands.

EFFECTIVE DATE: Effective on August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Jane P. Kollmeyer, Fortine District Ranger; Kootenai National Forest; P.O. Box 116; Fortine, MT 59918. Telephone: 406–882–4451.

SUPPLEMENTARY INFORMATION: Three separate events; a mountain pine beetle epidemic, a severe windstorm, and an escaped prescribed burn have killed or damaged sawtimber on 91 acres in the Advent Creek drainage. The project area is located within Management Area 12 as designated by the Kootenai Forest Plan (September 1987) as suitable timberland with timber management goals. In January of 1993, the Fortine District Ranger proposed a salvage timber harvest in the Advent Creek drainage. This proposal is designed to meet the following needs: (1) Reduce the risk of catastrophic wildfire by reducing fuel loading; (2) reduce spruce bark beetle levels by harvesting down spruce trees; (3) clear road surfaces and ditches of dead lodgepole pine to enable road maintenance to be accomplished without barriers of down material, allow free movement of seasonal runoff and reduce erosion potential and allow access for fire suppression; and (4) salvage merchantable timber products and contribute to a continuous supply of timer by recovering sawtimber before it deteriorates in value.

An interdisciplinary team was convened, and scoping began in the spring of 1993. Two alternatives were analyzed, no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The interdisciplinary team analyzed information disclosed in the Decision Memo and project file. The selected alternative would salvage approximately 300 MBF from 91 acres. This sale would use existing roads; no new roads are required.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to reduce the potential for catastrophic wildfire, to reduce bark beetle levels, and to recover merchantable sawtimber before it deteriorates and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Decision Memo and project file for the Flat Black Salvage Sale, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project would not be subject to review under 36 CFR part 217.

Dated: August 9, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–19618 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exempt Decision for Gusty Salvage Sale From Appeal, Malheur National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Gusty Salvage Sale, located on the Long Creek Ranger District, Malheur National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: John L. Shoberg, District Ranger, Long Creek Ranger District, Malheur National Forest, 528 E. Main Street, or Carol Cushing, Timber Management Planner, Long Creek Ranger District, 528 E. Main Street, John Day, Oregon 97845, phone: (503) 757–1731.

SUPPLEMENTARY INFORMATION: During the winter and spring of 1993, the wind blew down or damaged approximately 900 trees located on the Long Creek Ranger District, Malheur National Forest. The trees are scattered over the entire District impacting approximately 500 acres. Salvageable trees in the area averages 20 inches in diameter at breast height. Rapid drying of wind-blown trees has caused cracking or "checking" and blue staining in the ponderosa pine. These conditions are expected to quickly reduce the opportunity to recover merchantable sawlog material. Prompt salvage is needed to recover the maximum economic returns from the harvest.

The harvest of all blown down trees within riparian areas and designated old growth areas has been excluded.

The Gusty Salvage Sale, environmental analysis was started in April of 1993. After letters were sent and contacts made with individuals, State and Federal agencies, the following key issues were identified:

(1) Maximum economic return by salvaging the blown down trees quickly; (2) maintain water quality and fisheries habitat; and (3) retaining sufficient snags and down woody material for wildlife.

The proposed action would salvage about 900 trees. The trees are spread out

over approximately 500 acres of the district. This proposed salvage will harvest approximately 340,000 board feet of commercial timber resources. No roads would be constructed.

An interdisciplinary team of resource specialists developed two alternatives to analyze, including the No-Action Alternative. There is a project file containing specialist assessments and an assessment of the effects of alternatives developed on extraordinary circumstances to meet the objectives of the proposed action and responds to the key issues.

Biological evaluations have been completed for all plant, wildlife and fish proposed, endangered, threatened, and sensitive species within project areas. The biological evaluation indicates that the project could proceed as planned.

This salvage sale and accompanying work is designed to accomplish objectives as quickly as possible and minimize the amount of salvage volume loss and resource damage. This salvage of the blown down trees is important to initiate stand recovery. Based upon the environmental analysis, I have determined that good cause exists to exempt the Gusty Salvage Sale from administrative appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Memo for the Gusty Salvage Sale may be signed by the District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: August 6, 1993.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 93–19615 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

Draft Supplement to the Beaver-Dry Timber Sale Final Environmental Impact Statement Helena National Forest, Lewis and Clark and Powell Counties, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to supplement a final environmental impact statement.

SUMMARY: The Forest Service will complete a supplemental analysis of the Beaver-Dry Timber Sale Final Environmental Impact Statement (FEIS) that was available to the public on April 9, 1993 (**Federal Register**, Page 18394). The supplement is being prepared because the original FEIS was appealed and, upon review by the Deputy Regional Forester, the decision to implement timber harvesting and road construction was reversed back to the Helena National Forest Supervisor. The appeal issue centered around the failure of the FEIS to adequately address the cumulative effects of the timber harvest on sensitive species.

DATES: Public comments concerning the supplemental analysis should be submitted by August 27, 1993.

ADDRESSES: Send written comments to Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena MT, 59626.

FOR FURTHER INFORMATION CONTACT: Questions about the Draft Supplemental EIS should be directed to Maggie Pittman, Helena National Forest, 2880 Skyway Drive, Helena MT, 59601, Phone: (406) 449–5201.

SUPPLEMENTARY INFORMATION: The supplemental analysis will address the cumulative effects of timber harvesting and associated access road construction on sensitive species such as the bull trout.

The area analyzed in the FEIS encompassed 16,700 acres, with action proposed on approximately 650 acres of National Forest system lands in the Beaver and Dry Creek drainages. A portion of the assessment area being proposed for harvest and roading is within the Lincoln Gulch Roadless Area (1601).

Scoping and identification of the environmental issues for the Beaver-Dry proposed actions were discussed in the FEIS.

The Draft Supplement is expected to be available to the public in October, 1993. The comment period on the draft will be 45 days from the date of the EPA's notice of availability in the **Federal Register**. It is very important that those interested in the supplemental analysis participate by the close of the 45 day comment period. Substantive comments and objections will thereby be made available to the Forest Service at a time when they can be meaningfully considered and responded to in the Final Supplement to the Beaver-Dry Timber Sale FEIS.

Possible outcomes of this analysis include no change in the original decision, a modification of the original decision, or a supplemental EIS with a new proposed action and new alternatives, ultimately leading to a different decision.

If a modified or new decision is deemed necessary, the Helena Forest Supervisor will consider a variety of information in making that decision. This information includes the comments and responses to the Beaver-Dry Timber Sale FEIS and Draft Supplement, environmental consequences discussed in the Final Supplement, and applicable laws, regulations, and policies.

Dated: August 9, 1993.

James E. Guest,

Acting Forest Supervisor, Helena National Forest.

[FR Doc. 93–19571 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration

Title: Export Trading Companies Contact Facilitation Service

Form Numbers: Agency—ITA–4094P OMB–0625–0120

Type of Request: Extension of the expiration date of a currently approved collection; modify the form to use the Standard Industrial Classification (SIC) code rather than the Harmonized code to designate products and services listed.

Burden: 9,000 respondents; 4,500 reporting hours

Average Hours per Response: 30 minutes

Needs and Uses: The Export Trading Company Act of 1982 directs Commerce to provide a service to facilitate contact between producers of exportable goods and firms offering export trade services. The International Trade Administration (ITA) has established a clearinghouse for U.S. suppliers, banks, service organizations and export trading companies (ETCs). This helps U.S. producers identify and contact newly formed ETCs. ETCs may want to utilize this program to identify possible clients for their services. This collection seeks that information needed to provide the benefit to the user.

Affected Public: State or local governments; businesses or other for

profit or non-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5237, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 11, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–19718 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).
Agency: Office of Procurement
Title: Solicitations: Request for Proposal (RFP) or Invitation for Bids (IFB)
Form Number: Agency Number: None. OMB Number: 0605–0010
Type of Request: Reinstatement
Burden: 2,700 responses; 108,000 reporting hours. Average time is 40 hours
Needs and Uses: When soliciting offers from the private sector, the Department of Commerce must collect sufficient information to properly evaluate the offer and to determine that the offered price is fair and reasonable
Affected Public: Parties interested in selling products or services to the Department of Commerce
Frequency: On occasion
Respondent's Obligation: Required for Benefit
OMB Desk Officer: Gary Waxman (202) 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 11, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–19717 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Docket 38–93; Foreign-Trade Zone 79]

Application for Subzone, Reilly Dairy & Food Company Plant (Dairy Products) Tampa, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tampa, Florida, grantee of FTZ 79, requesting special-purpose subzone status for export activity at the dairy products plant of the Reilly Dairy & Food Company (RDF), located in Tampa, Florida. 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 August 6, 1993.

The RDF plant (19,000 sq.ft./12 acres) is located at 6603 South Trask Street, Tampa, Florida. The facility (46 employees) is used to produce various dairy food products for industrial and retail sales. The activity to be conducted under zone procedures would involve cutting, slicing, shredding, and repackaging foreign, ex-quota cheese for reexport, and mixing and/or repackaging foreign milk powder and butter for reexport. None of the foreign dairy products would be entered for U.S. consumption.

Zone procedures would exempt RDF from quota requirements and Customs duty payments on the foreign dairy products used in the export activity. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 15, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 1, 1993).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Customs Service, 4430 East Adamo, Suite 301, Tampa, FL 33605
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: August 6, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–19724 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–351–820]

Preliminary Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0371.

PRELIMINARY DETERMINATION: We preliminarily determine that ferrosilicon from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 (the Act), as amended. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace.

Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these investigations. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

We are investigating whether sales of slag should be excluded from our fair value comparisons. Slag is a by-product of ferrosilicon production and contains impurities which preclude it from being sold as ferrosilicon. We will examine this issue further at verification and will make a determination with regard to slag in the final determination.

Ferrosilicon is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is July 1, 1992, through December 31, 1992.

Case History

Since the notice of initiation on February 1, 1993 (58 FR 7529, February 8, 1993), the following events have occurred.

On February 3, 1993, we sent a cable to the U.S. consulates in Rio de Janeiro and Sao Paulo requesting a list of all known producers and exporters of the subject merchandise and information about the parties named. On February 12, 1993, the U.S. consulate in Rio de Janeiro provided us with the information requested.

On February 26, 1993, the International Trade Commission (ITC) issued an affirmative preliminary determination (USITC Publication 2605, February, 1993).

On March 8, 1993, we presented an Antidumping Survey to Cia De Ferro Ligas Da Bahia (Ferbasa), Libra Lingas Do Brazil (Libra), Cia Brasileira Carbureto de Calcio (CBCC) and Rima Electrometalurgia S.A. (Rima), in order to identify the Brazilian exporters of ferrosilicon which should receive antidumping questionnaires. On March 10, 1993, we issued antidumping questionnaires to Minas Gerais Minasligas (Minasligas) and Italmagnesio S.A. Industria e Comercio (Italmagnesio). We also issued a cost of production (COP) questionnaire to Minasligas.

On March 19, 1993, Italmagnesio requested a one week extension of time in which to respond to section A, the general information section, of the Department's antidumping questionnaire. On March 22, 1993, we granted the extension. On March 31, 1993, we received Italmagnesio's Section A questionnaire response.

On March 22, 1993, we received responses to the Antidumping Survey from CBCC, Ferbasa and Rima. Also, on March 22, 1993, we received a letter from Libra requesting an eight day extension of time in which to respond to the Antidumping Survey. Although we were unable to grant the request as the letter was not officially filed, we provided filing instructions and allowed five days for the request to be officially filed. On March 26, 1993, we received an officially filed extension request from Libra. On March 26, 1993, we granted Libra the extension for filing its Antidumping Survey response and received a timely response.

On March 24, 1993, Minasligas submitted its response to section A of the questionnaire.

On April 6, 1993, we presented sections A, B (sales in the home market or to third countries), C (sales to the United States), and D (cost of production/constructed value), of the antidumping questionnaire to CBCC.

On April 6, 1993, we received requests from Italmagnesio and Minasligas for an extension of time in which to respond to sections B and C, and sections B, C and D, respectively, of the questionnaire. On April 8, 1993, we granted extensions to Minasligas and Italmagnesio.

On April 8, 1993, we presented supplemental questionnaire instructions to CBCC, Italmagnesio, and Minasligas regarding special reporting requirements applicable to hyperinflationary economies.

On April 8, 1993, Italmagnesio submitted revised quantity and value information.

On April 13, 1993, CBCC requested an extension of time to respond to sections B and C of the questionnaire. On April 19, 1993, we received a request from CBCC for an extension of time in which to respond to section D of the questionnaire. On April 19, 1993, we granted CBCC extensions for responding to sections B, C, and D of the questionnaire.

On April 16, 1993, we issued deficiency letters to Italmagnesio and Minasligas regarding their respective responses to section A of the questionnaire.

On April 20, 1993, petitioners submitted corrections to alleged computational errors in the less than fair value (LTFV) margins that were published in the notice of initiation, amended their sales below the COP allegation, and submitted an allegation of sales below the COP using company-specific data previously reported by Italmagnesio. On April 27, 1993, petitioners provided further detail concerning the computations contained in their April 20, 1993, COP submission On May 10, 1993, we initiated a COP investigation for Italmagnesio and, on May 11, 1993, we issued a COP questionnaire to Italmagnesio.

On April 21, 1993, CBCC submitted its response to section A of the questionnaire. On April 29, 1993, we issued a deficiency letter to CBCC for its section A questionnaire response. On April 30, 1993, Italmagnesio and Minasligas submitted responses to the Department's respective section A deficiency letters.

On May 3, 1993, Minasligas submitted its response to section D of the Department's questionnaire.

On May 6, 1993, CBCC requested a one week extension to respond to sections B and C of the Department's questionnaire.

On May 11, 1993, we denied CBCC's extension request as an extension had previously been granted for this response and because of time constraints in the investigation. On May 13, 1993, we received CBCC's section A deficiency response.

On May 14, 1993, we issued a deficiency letter to Italmagnesio for its section B and C questionnaire response.

On May 14, we received Italmagnesio's section A deficiency response.

On May 18, 1993, we received CBCC's response to sections B and C of the Department's questionnaire.

On May 18, 1993, we issued a deficiency letter to Minasligas for its section B and C questionnaire response.

On May 20, 1993, we issued deficiency letters to Minasligas and Italmagnesio for their respective responses to the Department's section A deficiency letters.

On May 24, 1993, at the request of petitioners, we postponed the preliminary determination until not later than August 10, 1993.

On May 25, 1993, Italmagnesio requested an extension of time in which to respond to the Department's section B and C deficiency letter. On May 25, 1993, we granted this extension.

On May 26, 1993, we received CBCC's section D questionnaire response.

On May 27, 1993, Minasligas submitted a revised exhibit to its section D response.

On May 27, 1993, we issued CBCC a second deficiency letter.

On June 1, 1993, we received Minasligas' section B and C deficiency response.

On June 3, 1993, we received Italmagnesio's response to our second section A deficiency letter.

On June 4, 1993, we issued a deficiency letter to CBCC for its response to sections B and C of the questionnaire.

On June 7, 1993, Italmagnesio submitted clearer copies of exhibits that had previously been submitted on June 4, 1993.

On June 7, 1993, we received an extension request from Italmagnesio to respond to section D of the Department's questionnaire. On June 7, 1993, we granted the extension.

On June 9, 1993, we issued deficiency letters to CBCC and Minasligas based upon their respective section D questionnaire responses.

On June 10, 1993, CBCC submitted its response to the Department's second section A deficiency letter.

On June 14, 1993, Minasligas requested an extension of time in which to respond to the Department's section D deficiency letter. On June 16, 1993, we granted the extension.

On June 15, 1993, Italmagnesio submitted its response to section D of the questionnaire.

On June 21, 1993, CBCC submitted its response to the Department's section B and C deficiency letter.

On June 23, 1993, we issued a deficiency letter to Minasligas based upon its responses to the sections A, B and C deficiency letters.

On June 24, 1993, we issued a deficiency letter to Italmagnesio based upon its response to section D of the questionnaire. On June 28, 1993, we issued a deficiency letter to Italmagnesio based upon its section B and C deficiency response.

On June 29, 1993, CBCC requested an extension of time in which to respond to the Department's section D deficiency letter. On June 30, 1993, we denied CBCC the extension as CBCC had already received an extension of time for this response and because of the time constraints in the investigation. On June 30, 1993, CBCC submitted the majority of its response to the section D deficiency letter. On July 9, 1993, CBCC submitted the balance of its section D deficiency letter. On June 30, 1993, we issued a deficiency letter to CBCC based upon its response to the Department's section B and C deficiency letter.

On June 30, 1993, we received Minasligas' section D deficiency response.

On July 7, 1993, Italmagnesio requested an extension of time in which to respond to the Department's section B, C and D deficiency letters. On July 8, 1993, we granted the extensions.

On July 7, 1993, we received Minasligas' response to the Department's section D deficiency response. On July 7, 1993, we also received Minasligas' response to our deficiency letter based on its responses to our sections A, B and C deficiency letters.

On July 15, 1993, we received a response to the Department's deficiency letter covering CBCC's section A, B and C deficiency responses.

On July 19, 1993, Minasligas submitted its response to the Department's deficiency letter covering Minasligas' section B and C deficiency response.

On July 20, 1993, we received a request from CBCC to extend the final determination in the event of an affirmative preliminary determination. On July 23, 1993, we received a similar request on behalf of Italmagnesio and Minasligas.

On July 20, 1993, petitioners alleged that critical circumstances exist with respect to imports of ferrosilicon from Brazil. See "Critical Circumstances" section of this notice. On July 23, 1993, we solicited export data from CBCC, Italmagnesio, and Minasligas.

On July 22, 1993, Minasligas submitted a revised U.S. sales listing because it discovered a previously unreported sale. The revised sales listing also updated inventory carrying costs that had been corrected in the text of the July 19, 1993, submission but had not been corrected on the diskette containing the sales listing.

On July 23, 1993, Minasligas responded to petitioners' comments on section D of the Department's questionnaire.

On July 23, 1993, we provided Italmagnesio and Minasligas with the Department's proposed methodology for reporting inventory holding gains and losses. We also requested that Italmagnesio and Minasligas submit additional information relating to the inventory holding gains and losses.

On July 26, 1993, Minasligas resubmitted exhibits for its July 19, 1993 submission. On July 26, 1993, Italmagnesio resubmitted copies of exhibits due to poor quality transmission.

On July 28, 1993, Italmagnesio provided inventory gain/loss data. On July 30, 1993, Italmagnesio provided support for the inventory gain/loss data submitted on July 28, 1993. On July 28, Minasligas provided inventory gain/loss data.

On August 2, 1993, petitioners submitted comments on deficiencies in respondent's questionnaire responses and how the Department should treat the deficiencies in the preliminary determination.

On August 6, 1993, Italmagnesio and Minasligas submitted company-specific export data.

On August 6, 1993, we requested all respondents to resubmit their sales listings and product concordances on the basis of the instructions contained in appendix V, the section covering product scope and description criteria, of the questionnaire.

Best Information Available

Because all respondents failed to respond adequately to our questionnaire, we must base our determination on the "best information available" (BIA), pursuant to section 776(c) of the Act. Specifically, all three respondents failed to prepare their model match concordance according to the instructions set forth in appendix V to the Department's antidumping questionnaire and failed to identify unique product characteristics as required by appendix V. Furthermore, respondents failed to supply this information despite the fact that they were specifically requested to do so on three separate occasions including the original questionnaire, the section B and C deficiency letters, and the deficiency letters covering the section B and C deficiency responses. If respondents provide the information as requested within the deadlines set forth in our letter of August 6, 1993, we will conduct verification and consider such

information for purposes of the final determination.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who substantially cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. Because CBCC, Italmagnesio, and Minasligas have all responded to our requests for information, we determined them to be substantially cooperative for purposes of this preliminary determination.

On January, 26, 1993, February 1, 1993, and April 20, 1993, petitioners amended the petition. The April 20, 1993, amendment alleged that the Department had made computational errors in the LTFV margins published in the notice of initiation; it also amended petitioners' allegation of sales below COP by using Brazilian company-specific data. The Department has reviewed the margins contained in its notice of initiation, and has corrected those computational errors which were made. The computational errors include failure to recalculate any figures which were a percentage of the revised cost of manufacturing. The cost of manufacturing was revised based upon conversion errors made by petitioners with respect to two material inputs as detailed in the notice of initiation.

We have, however, determined not to rely on petitioners' April 20, 1993, amendment for purposes of calculating a margin based on BIA in this preliminary determination. Since the purpose of a response is to provide data to the Department so that it can conduct an analysis within the bounds of the statute, it is inappropriate for petitioners to extract information from a response to amend its petition, after initiation, effectively for purposes of proposing a BIA rate. The purpose of the BIA provision, in turn, is to encourage respondents to submit full and accurate responses to the Department's questionnaire. Allowing petitioners to use data contained in responses in a piece-meal manner in order to increase the margins alleged in the petition would serve as a disincentive to respondents to provide full and accurate responses. Therefore, we have rejected petitioners' recommendation that the estimated petition margins should be based on amendments filed following the initiation of the investigation. Accordingly, as BIA, we used the simple average of the LTFV margins as contained in the petition, as amended, as of the date of initiation, corrected as noted above.

Postponement of Final Determination

As noted in the "Case History" section of this notice, we received requests from all respondents to postpone the final determination in the event of an affirmative preliminary determination. We find no compelling reasons to deny these requests. Therefore, in accordance with § 353.20(b)(1) of the Department's regulations, we are postponing the final determination until not later than 135 days from the date of publication of this notice in the **Federal Register**.

Critical Circumstances

On July 20, 1993, petitioners alleged that "critical circumstances" exist with respect to imports of ferrosilicon from Brazil. Section 733(e)(1) of the Act provides that the Department will determine whether there is a reasonable basis to believe or suspect 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.

Regarding (A)(i) above, we normally consider whether there has been an antidumping order in the United States or elsewhere on the subject merchandise in determining whether there is a history of dumping. Regarding (A)(ii) above, we normally consider margins of 25 percent or more for purchase price comparisons and 15 percent or more for exporter's sales price comparisons as sufficient to impute knowledge of dumping. Since the preliminary estimated dumping margin for all exporters of ferrosilicon from Brazil is in excess of 25 percent, we can impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. If imports during the period immediately following the filing of a petition increase by at least 15 percent over imports during a comparable period immediately preceding the filing of a petition, we normally consider them massive.

For purposes of determining whether there have been massive imports over a relatively short period of time, the Department relied on official U.S. statistics. We were unable to consider the company-specific information submitted by respondents on August 6, 1993, and August 9, 1993, as there was not sufficient time to analyze it prior to the preliminary determination. Pursuant to 19 CFR 353.16(g), we compared the import volumes for August 1992 through December 1992 as the base period, and January 1993 through May 1993 as the comparison period. This was the most current period prior to the preliminary determination for which import statistics were available.

Based on our analysis of imports of merchandise under the relevant HTS categories, we find that imports of ferrosilicon from the base period to the comparison period have increased by more than 15 percent. We also examined the import data to ensure that the increase in imports did not simply reflect seasonal trends. The data does not indicate that seasonal trends were responsible for the increases in shipments during the comparison period. With respect to share of domestic consumption, the information available to us at this time does not allow us to evaluate whether the increase in absolute volume of shipments of ferrosilicon can be accounted for by a change in domestic consumption. Therefore, in accordance with 19 CFR 353.16(a)(2), we find that imports of the subject merchandise have been massive over a relatively short period of time.

Because the dumping margins are sufficient to impute knowledge of dumping, and because imports have been massive, in accordance with section 733(e) of the Act, we find that critical circumstances exist with respect to imports of the subject merchandise. With respect to the firms covered by the "All Others" rate, because the dumping margins are sufficient to impute knowledge of dumping, and because we have determined that imports of ferrosilicon have been massive over a relatively short time, we determine that critical circumstances also exist for "all other" firms.

We will examine the company-specific export data provided by respondents at verification and will consider the data and any comments for purposes of the final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of ferrosilicon from Brazil, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after a date which is 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or positing of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/ exporter	Margin percent	Critical circumstances
Italmagnesio S.A. Industria e Comercio.	28.22	Yes.
Companhia Ferroligas Minas Gerais.	28.22	Yes.
Companhia Brasileira Carbureto de Calcio.	28.22	Yes.
All Others	28.22	Yes.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than October 27, 1993, and rebuttal briefs no later than November 1, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 3, 1993, at 1:30 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: August 10, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19725 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–504]

Porcelain-on-Steel Cooking Ware From Mexico; 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 December 27, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. The review covers two manufacturers/exporters of this merchandise to the United States and the period December 1, 1989 through November 30, 1990.

Based on our analysis of the comments received and the corrections of certain clerical and computer program errors, we have changed the preliminary results. The final results are listed below in the section "Final Results of Review."

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Rick Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1991, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico for the period December 1, 1989 through November 30, 1990 (56 FR 67062). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cooking ware, including tea kettles, which do not have self- contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7323.94.00. Kitchenware currently entering under HTS item number 7323.94.00.30 is not subject to the order. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters, APSA and CINSA, of Mexican porcelain-on-steel cooking ware.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttals from both respondents and the petitioner, General Housewares Corporation (GHC).

Comment 1: Petitioner argues that the Department should compare first quality merchandise sold in the U.S. market only with first quality merchandise sold in the home market because comparing first quality merchandise with second quality (seconds) merchandise ignores market pricing realities and results in distorted margins.

While neither APSA nor CINSA disagrees with petitioner's argument, CINSA notes that it is unnecessary to revise the computer program with respect to its sales, because foreign market value was calculated only on the basis of above-cost home market sales (*i.e.*, sales involving first quality merchandise). CINSA argues that to the extent that the Department attempts to make price comparisons based on quality, the Department should also revise its cost test to make comparisons on the basis of the same quality and cost/price comparisons.

Department's Position: We agree that we should compare first quality merchandise sold in the U.S. market with only first quality merchandise sold in the home market and have revised our model matches accordingly. To do otherwise would distort the margins, since sales prices are dependent on the quality of the merchandise. Similarly, we have compared second quality merchandise sold in the United States with second quality merchandise sold in the home market. Because quality does not make a difference in the cost of the product, we did not revise our cost test to account for quality.

Comment 2: Both petitioner and CINSA contend that the Department should differentiate between the number of enamel coatings in making its fair value comparisons. Petitioner states that comparing a cooking ware item with two coats of enamel with an item with one coat is not a comparison of identical items.

Department's Position: We believe that the number of enamel coatings is an important criteria for model matching. Therefore, we revised our model matches to include the number of coatings as a matching criteria in our price-to-price comparisons.

Comment 3: Petitioner alleges that the Department should correct its computer program to deduct discounts and rebates from home market prices before determining whether sales were below the cost of production. Petitioner claims the gross unit prices reported on CINSA's home market sales tape have not been adjusted for discounts and rebates. The Department's standard practice is to compare home market prices net of discounts and rebates to the cost of production. Petitioner cites Brass Sheet and Strip From The Netherlands; Preliminary Results of Antidumping Duty Administrative Reviews (56 FR 56187, 56189 (November 1, 1991)).

CINSA does not object to petitioner's proposed change in the computer program. However, CINSA submits that the Department must also use net sales prices in the calculation of CINSA's profit ratio. Otherwise, according to CINSA, the Department has overstated CINSA's profit by calculating profit based on gross sales prices.

Department's Position: We agree. We generally deduct discounts actually granted by a manufacturer to its home market customers from the sales price in order to determine the net return on the sale. We consider rebates to be discounts which are granted after the delivery of the merchandise to the customer. Therefore, in our final results we have deducted discounts and rebates from the home market price before determining whether sales are below cost of production and used net sales prices in the calculation of CINSA's profit ratio.

Comment 4: Petitioner argues that the Department should follow its normal practice and limit the use of similar merchandise in making fair value comparisons to those comparisons where the difference in merchandise (difmer) adjustment is less than or equal to 20 percent of the cost of manufacturing the U.S. product. Petitioner contends that for those comparisons where the difmer adjustment exceeds 20 percent of the cost of manufacturing the U.S. merchandise, the Department should use constructed value (CV) as the basis for determining foreign market value (FMV).

Petitioner asserts that in this case, given the size of the difmers proposed by CINSA, the potential for distortion is great due to the fact that CINSA and the Department have not adjusted for the measure of general selling and administrative expenses (GS&A) and profit that is probably incorporated in the price of the U.S. items.

Finally, petitioner contends that it is irrelevant that the difmer is primarily due to a readily discernible factor—the material costs of steel rims on the U.S. product—because it is the value of the difmer rather than its cause which distorts GS&A and profit and results in distorted less than fair value comparisons. Petitioner maintains that because the claimed difmer adjustments for the addition of stainless steel rims exceed 20 percent of the cost of manufacturing the U.S. merchandise compared, the Department should use constructed value as the basis for determining foreign market value comparisons for certain items.

CINSA argues that to the extent that identical merchandise comparisons cannot be made, the Department should make similar merchandise comparisons. While CINSA agrees with petitioner that the Department should incorporate difmer adjustments, CINSA disagrees that constructed value should be used if the reported steel rim adjustment is greater than 20 percent. CINSA notes that in its questionnaire it identified three stainless steel rimmed cookware articles sold in the United States, including difmer adjustments, which the Department could use for comparison. CINSA states that the cost accounting data, from which the differences in material, labor and overhead costs were calculated, was verified by the Department. CINSA contends that the Department is not bound by its informal 20 percent difmer rule, since the rule is not mandated by statute or regulation. According to CINSA, the 20 percent rule is used to determine whether the home market article suggested for comparison may be reasonably compared with the U.S. article.

CINSA contends that in the cases cited by petitioner, the Department was comparing different products, and, thus, adherence to the 20 percent guideline was appropriate, since different products with more than a 20 percent cost differential could not, under the statutory definition, reasonably be considered as "similar" merchandise. CINSA points out that in Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 38114; August 12, 1991) (Cooking Ware from Korea), the Department made difmer adjustments that exceeded 20 percent because the items compared were identical except for a different insertable bottom or cover and for additional knobs or handles. In the present case, the items being compared are identical except for the steel rim.

CINSA maintains that, because the similar comparisons proposed by CINSA consist of items identical to each other except for the addition of a stainless steel rim, and because differences in material, labor and overhead costs were properly quantified by CINSA, to the extent that identical home market price comparisons cannot be made with U.S. sales of stainless steel rimmed cookware, the Department should use home market sales prices of the most similar home market article with adjustments for the costs associated with the stainless steel rim.

Department's Position: We agree with petitioner. The Department follows a guideline of generally applying a 20-percent cost differential cap in order to help ensure that the home market model chosen is "similar" within the meaning of section 771(16) of the Act. The Department generally believes that if the costs of two products are greatly different due to physical differences in the merchandise, then the products may not be of approximately equal value and, thus, may not reasonably be compared to each other. While there are instances in which comparisons are made even if the difmer is in excess of 20 percent of the cost of manufacture, we believe that the difmer in this case is so great as to create an unjustifiable distortion if the comparisons were made. As the petitioner correctly points out, the potential for distortion is great due to the fact that the proposed

methodology would not adjust for the measure of GS&A and profit that logically is incorporated in the price of the U.S. items. Finally, we agree with petitioner that it is irrelevant that the difmer is primarily due to a readily discernable factor (the material cost of steel rims on the U.S. product) because it is the value of the difmer, not the cause, that distorts GS&A and profit in the proposed comparisons.

To the extent that the approach adopted here is inconsistent with prior decisions, such decisions are superseded by this determination and a recent determination. (See Certain Stainless Steel Cooking Ware from the Republic of Korea; Final results of Antidumping Duty Administrative Review (Korean Cooking Ware) (58 FR 9560; February 22, 1993). In Korean Cooking Ware, we used constructed value for those comparisons where the difmer adjustment significantly exceeded 20 percent of the cost of manufacturing the U.S. merchandise. Therefore, our decision in this case to use constructed value for those comparisons where the difmer significantly exceeded 20 percent of the cost of manufacturing the U.S. product is consistent with the Department's current stated practice. See also Policy Bulletin 922 of July 27, 1992 for a more thorough discussion of this policy.

Comment 5: Petitioner argues that the weighted-average margin of all sales is not the appropriate choice for best information available (BIA) for unmatched sales. Since CINSA and APSA failed to provide home market sales, cost of production, constructed value, or similar merchandise and variable cost data for certain sales, BIA should be the highest margin calculated for any U.S. sale made by respondents. Petitioner cites Cooking Ware from Korea (56 FR at 38115), where the respondent failed to provide requested information on particular sales and the Department applied the highest margin calculated on any U.S. sale as BIA.

APSA contends that the Department's selection of BIA was correct. Citing *Zenith Electronics Corporation* v. *United States*, 10 CIT 268, 633 F. Supp. 132 (1986), CINSA and APSA contend that a more adverse BIA is appropriate only where a respondent refuses to cooperate. Respondents state that they have fully cooperated with the Department.

Department's Position: We disagree with petitioner. In Cooking Ware from Korea, the Department used BIA because it discovered at verification that respondent had not reported a number of sales to the United States, the home market and third countries. In that case, it was appropriate for the Department to resort to BIA and to apply the highest margin found on any U.S. sale to the unreported sales discovered at verification. In Cooking Ware from Mexico, Cinsa and APSA responded to all requests for supplemental information made by the Department. However, the Department sometimes encounters a situation where it is not clear whether a respondent should have provided information needed to calculate accurate dumping margins. In this case, the Department recognizes that a gap existed for certain U.S. sales information in this record which required the Department to use "other information" as a reasonable surrogate for the missing data. Rather than make another information request, the Department instead chose to use a neutral and reasonable surrogate to bridge this gap. Not to be confused with "best information available," the Department derives the authority to use neutral information under such circumstances from its own inherent authority to administer the U.S. antidumping law in a fair and equitable manner. The Department considers the weighted-average margin to be a reasonable rate to apply to the unmatched sales in this case. See Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Administrative Review of the Antidumping Finding (58 FR 15481; March 23, 1993) and Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review (58 FR 32093, 32097; June 8, 1993).

Comment 6: Petitioner contends that the statute expressly requires the Department to deduct from U.S. price all inland freight and other transportation expenses incurred by the foreign producer in transporting the merchandise from the foreign plant to the place of delivery (Citing 19 U.S.C. 1677(d)(2)(A)). Petitioner contends that, contrary to the situation with U.S. sales, the Department should not allow CINSA's deduction of home market factory-to-warehouse freight charges incurred on home market sales as direct sales expenses in purchase price comparisons because those charges were incurred prior to the date of sale.

Petitioner argues that the courts have acknowledged that the Department's practice of determining whether movement expenses are directly related to a particular sale by looking to the date of sale is appropriate and have approved the use of the circumstance of sale provision to permit a deduction of foreign inland freight costs from foreign market value. Petitioner cites *Silver Reed America, Inc.* v. *United States*, 7 CIT 23581 F.Supp. 1290 (1984), rev'd on other grounds, *Consumer Prod. Div., SCM Corp.* v. *Silver Reed America, Inc.* 753 F.2d 1033 (1985). In *Silver Reed*, the foreign producer manufactured typewriters at a factory in Kashiwazaki, Japan and shipped them to its central warehouse abutting another factory located in Kodaira, Japan. The typewriters were stored and sold only from the central warehouse. The court concluded that these transportation costs occurring prior to sale were an overhead expense not directly related to the sales under consideration.

CINSA replies that the Department properly deducted CINSA's home market inland freight from foreign market value and refutes petitioner's claim that the freight expense incurred from the factory to the warehouses is an indirect selling expense. CINSA contends that the question as to whether the pre-sale expenses qualify as a circumstance of sale adjustment is not whether the expenses can be tied to a particular sale of the merchandise, but whether they can be tied directly to sales of the subject merchandise.

Department's Position: We agree with respondent. The Department believes that it is appropriate to deduct all movement expenses in calculating FMV. 19 U.S.C. 1677a(d)(2)(A) of the Tariff Act and 19 CFR 353.41(d)(2)(i) require the Department to deduct all inland freight expenses incurred on U.S. sales, regardless of when the expenses are incurred, in order to establish the ex-factory price for sales comparison purposes. Unlike the situation involving U.S. price, the statute and regulations do not provide explicitly for the Department to deduct home market inland freight expenses from FMV. Given this gap in the statutory framework, the Department previously attempted to adjust FMV for home market inland freight expenses as a circumstance-of-sale adjustment set forth in Section 773 of the Act and 19 CFR 353.56. In accordance with these provisions, however, the Department attempted to limit any adjustment to expenses that were incurred as a direct result of the sales under investigation. Consequently, the Department often has denied respondents' claims for pre-sale inland freight expenses because respondents were unable to meet this requirement because they were unable to tie such expenses directly to specific sales. See, e.g., Portable Electric Typewriters From Japan; Final Determination of Sales at Less Than Fair Value (45 FR 18416, 18418 (1990); Final Results of Antidumping Duty Administrative Review, Color

Television Receivers from Korea (51 FR 41365; November 16, 1986).

Given the inequities presented by the Department's earlier approach to the treatment of pre-sale inland freight expenses incurred in the home market, the Department recently changed its approach. See Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (55 FR 35916, 35920; September 4, 1990), Red Raspberries from Canada; Final Results and Termination in Part of Antidumping Duty Administrative Review (56 FR 677; January 8, 1991), Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review (56 FR 26054, 26056; June 6, 1991). In fact, the Department's change in approach was recently upheld in *The AD Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 92–212; (CIT 1992). By deducting pre-sale inland freight expenses on the home market side from FMV, the Department is able to compare the ex-factory prices from United States sales with their counterparts on the home market side.

Moreover, the Department's present approach is consistent with the fundamental principles of the antidumping law. By comparing ex-factory prices corresponding to U.S. sales with ex-factory prices corresponding to home market sales, the Department is able to make a fair comparison of sales in the two markets by reconstructing the prices at a specific common point in the chain of commerce, when the merchandise is leaving the factory gates. The courts have upheld these principles. See *AOC International, Inc. United States*, 721 F.Supp 314, 317 (CIT 1989), *citing Smith-Corona Group* v. *United States*, 713 F. 2d 1568, 1572 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984) and *Budd Company* v. *United States*, Slip Op. 91–80 at 10 (CIT Sept. 5, 1991); *The AD Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 92–212 (CIT 1992).

Comment 7: Petitioner contends that the Department should not allow alleged "commissions" paid to salesmen who are CINSA employees as deductions to foreign market value because they are merely intracorporate transfers of funds. Citing Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker from Japan, 56 FR 21167 (1991), petitioner states that the Department's long-standing practice has been to deny adjustments to home market prices for commissions paid by respondents to related parties because such payments were merely intracorporate transfers of funds rather than actual commissions paid on the home market sales. According to petitioner, the same reasoning applies to commissions paid to employees; an employee's total compensation is like an intracorporate transfer of funds in that the respondent does not lose anything by characterizing part of that total compensation package as "commissions."

CINSA counters that it did not claim as a deduction any salaries, benefits, or reimbursed expenses paid to its employees. Unlike in the case cited by petitioner, CINSA paid the commissions to company employees, not to a related corporate entity. CINSA maintains that commissions paid to its employees were directly tied to sales, were paid pursuant to contractually agreed upon percentages of sales and did not include salaries, benefits or expenses.

Department's Position: We disagree with petitioner. The Department does not treat commissions paid to employees as intracorporate transfers of funds. See Industrial Forklift Trucks from Japan; Final Determination of Sales at Less than Fair Value, (53 FR 12552, 12562; April 15, 1988). We normally treat commissions to employees as direct selling expenses when tied to sales. See Drycleaning Machinery From West Germany; Final Results of Administrative Review of Antidumping Finding (50 FR 32154; August 8, 1985).

In this review, we verified that CINSA incurred its commission expenses only if the salesmen made a sale; that, while a portion of CINSA's payment to its employed salesmen was attributable to the salesmen's salaries, the remainder of their payments were commissions, equal to a specified percentage of their sales; and that CINSA did not include any sales-related expenses or salaries in their claimed adjustment. We also found CINSA's allocation methodology to be reasonable. As a result, an adjustment for CINSA's commission payments is appropriate.

Comment 8: Petitioner argues that the Department should reduce the prices of all U.S. sales reported by APSA because of deficiencies discovered at verification. Petitioner points out that of the four sales to the United States selected at verification for review the price actually paid by the customers was less than the price listed by APSA on the sales tape because the customers took additional discounts. Petitioner alleges that ignoring or excusing the inaccuracy of the prices discovered only through verification would render the verification process meaningless. Petitioner proposes that, as BIA, the Department should reduce the reported prices for all U.S. sales, except for those verified to be correct, by the average of the additional discounts taken on the U.S. sales.

APSA responds that where it granted "automatic" discounts to customers, the export prices were reported net of discounts, and where Intermex (ITCO), a related trading company in the United States, accounted for short shipments or invoicing errors, ITCO granted a rebate. When such a rebate was authorized, a credit memo was issued, as verified by the Department. APSA maintains that in the instances where three U.S. customers refused to pay the full amount of ITCO's invoice, ITCO continued to carry the unpaid amounts as outstanding balances on their accounts, and continues to demand payment. APSA argues that a partial payment does not constitute a discount paid by ITCO, and that the amounts reported in the sales listing continue to reflect correctly the transaction price for the sales in question and all other sales. Moreover, there is no basis for the Department to reduce the net sales prices for all customers since the Department verified that the sales prices reported by APSA in its sales listing for all other customers were accurate.

Department's Position: During verification, we discovered that APSA had understated the actual prices paid by various customers and that there was no indication of reasonable expectation payment. Section 776 of the Tariff Act of 1930 mandates that we use BIA in these circumstances. As BIA, we drew an adverse inference and reduced reported net prices on all U.S. sales to the those selected customers who took unauthorized discounts by the average of the unauthorized discounts actually deducted from the U.S. sales to the respective customers which were specifically examined.

Comment 9: Petitioner alleges that the methodology used by APSA to calculate inventory carrying costs on ESP sales understates the amount for several reasons. First, APSA's calculation of inventory carrying costs does not account for the time finished goods were held in inventory in the home market. Also, the home market interest rate, not the U.S. interest rate, should be used in the calculation. Second, the methodology should account for the time the merchandise was in transit ("time on the water") to ITCO. Finally, the methodology does not account for the time the merchandise remained in

the inventory of ITCO prior to sale to an unrelated party.

Petitioner contends that the Department's standard practice in fair value comparisons with respect to ESP sales is to deduct an imputed inventory carrying cost to account for the seller's opportunity cost of holding inventory. If the information necessary to calculate imputed inventory costs is not available, petitioner claims that the Department should use BIA. E.g., Antifriction Bearings (Other Than Tapered Roller Bearings) And Parts Thereof From The Federal Republic Of Germany, Appendix B, Section 12 (54 FR 18992, 19050-19051; May 3, 1989). Petitioner maintains that because APSA failed to provide complete information for the correct calculation of inventory carrying costs for ESP sales, the Department should use BIA. The appropriate BIA, according to petitioner, is the highest amount reported for inventory carrying costs for any ESP sale.

APSA contends that petitioner misinterpreted ITCO's reported inventory carrying costs, because the Department verified that APSA identified two separate inventory carrying costs, one for home market sales and one for ESP sales made by ITCO. APSA acknowledges that the methodology used to calculate the two imputed inventory carrying charges were similar, but that the variables used in the calculations were different in each market.

APSA disputes petitioner's assumptions that U.S. inventory costs were understated. First, ITCO's reported inventory carrying costs already included the periods between production in Monterrey, shipment to San Antonio ("time on the water"), and time in ITCO inventory. Further, because all export shipments were financed through dollar-denominated FOMEX export loans which were tied to and paid for by specific invoices, the merchandise never really entered APSA's home market inventory. Second, the Department verified that all export sales, including ESP sales, were financed through dollar-denominated FOMEX export loans. APSA maintains that since ITCO paid APSA for the merchandise and used dollar-denominated loans to finance those exports, the imputed inventory carrying costs should be imputed to ITCO in dollar terms, not to APSA in peso terms.

Department's Position: We agree with respondent. We verified that inventory carrying charges were calculated using amounts applicable to each market and that the calculation incorporates the charges for merchandise in inventory between production and the time of shipment. The fact that export shipments were financed through FOMEX dollar-index loans is irrelevant for the purpose of determining whether merchandise entered APSA's home market inventory. We agree with petitioner that we generally use respondent's home-market borrowing rate to calculate the inventory carrying costs when the merchandise is in transit in the home market. However, since we verified that the merchandise was in transit in the home market for less than an average of one day and ITCO financed its export shipments through dollar indexed loans, use of the ITCO's U.S. short-term interest rate to calculate inventory carrying charges is appropriate in this case.

Comment 10: CINSA requests that the Department exclude from its data set the sectional lunch pail, item 10858, which CINSA inadvertently included in its sales tape. CINSA claims that that item is an article of kitchenware based on the description in CINSA's questionnaire response and, therefore, is not within the scope of the antidumping order.

Department's Position: We agree and have dropped item 10858 from the data set.

Comment 11: CINSA alleges that the Department incorrectly calculated U.S. credit expense and credit income on U.S. sales subject to extended credit. Specifically, CINSA states that the Department verified that CINSA offered extended credit terms to two customers. CINSA contends that even though sales to these customers were subject to extended credit terms, CINSA discounted the letters of credit to local banks shortly after the date of sale. CINSA recorded the payment date of each transaction as the date the documents were discounted to the bank and CINSA received payment. CINSA asserts that for sales to these two customers, the Department should calculate both the credit income and the credit expense based on the period between the date of shipment and the date of discounting, since CINSA received payment from the bank for the sale on the date of discounting.

Petitioner on the other hand agrees with the Department's credit calculations for these sales because CINSA has not provided the terms of the discounts on the letters of credit or the discounted amounts paid by the local banks. Therefore, petitioner argues that respondent should not benefit from its failure to provide this information by being allowed to reduce its credit expense.

Department's Position: We agree with petitioner. We have not allowed CINSA's claim because we were unable to verify the expense incurred by CINSA from the discounting of the letters of credit. We have, however, corrected a clerical error. In the credit calculation we divided the term over 330 days rather than 360 days.

Comment 12: CINSA contends that the Department incorrectly adjusted the reported COP to account for depreciation on a revalued basis. CINSA states that the Department normally only uses revalued depreciation in cases of hyperinflation, whereas, for this review, Mexico was not in a state of hyperinflation. CINSA asserts that the submitted financial statements were prepared for tax purposes and that Mexican GAAP calls for the use of historical depreciation. CINSA also contends that the Department's calculation of the revised depreciation amount contained a clerical error.

Petitioner contends that the Department acted correctly in adjusting CINSA's COP submission to reflect revalued depreciation. Petitioner asserts that Mexican GAAP requires that costs reflect depreciation expense based on the updated rather than historical value of assets. Petitioner contends that historical depreciation is included in CINSA's financial statement only as a reference point from which to calculate revalued depreciation expense.

Department's Position: We agree with petitioner. The Department followed Mexican GAAP and adjusted CINSA's COP data to reflect the revalued depreciation. This approach coincided with CINSA's financial statements, which actually showed historical depreciation adjustments for inflation, and which were prepared in accordance with Mexican GAAP. We did, however, recalculate the amount of the adjustment to the COP to correct a clerical error in the calculation.

Comment 13: CINSA claims that the Department incorrectly increased the COP to account for mandatory profit sharing payments made to its employees. CINSA contends that these payments are not related to the cost of production as they are determined based on the amount of profit earned by the company.

Petitioner states that the Department correctly included the profit sharing payments in its calculated cost of production. Petitioner claims that these payments are similar to bonuses paid to employees that are routinely included in GS&A. Petitioner also contends that these payments are similar to other mandatory employee benefits such as health care and pension payments.

Department's Position: We agree with petitioner. Because the profit sharing payments are mandatory, the payments

represent compensation to employees involved in the production of the merchandise and administration of the company. Therefore, these payments are properly part of CINSA's COP of the subject merchandise.

Comment 14: CINSA claims that the Department should have reduced production costs by the amount of short-term interest income in excess of interest expense. CINSA contends that the Department's current administrative practice of limiting the interest income offset to the amount of interest expense does not reflect the economic reality of the verified information in the financial statement.

Petitioner argues that CINSA's claim is contrary to the Department's established administrative practice which attempts to capture the current cost of production. Petitioner states that long-term interest income does not directly relate to current manufacturing costs. Petitioner states that using CINSA's methodology makes companies with long-term investments have higher margins than companies with short-term investments.

Department's Position: In accordance with its long standing policy, the Department limited the offset of short-term interest income to the amount of interest expense. See Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Administrative Review (55 FR 26721 June 29, 1990); Brass Sheet and Strip from Canada; Final Results of Antidumping Administrative Review (55 FR 31414; August 2, 1990); and Final Determination of Sales at Less than Fair Market Value; Sweaters from Taiwan (55 FR 34585; August 23, 1990). The Department reduces interest expense by the amount of short-term interest income to the extent finance costs are included in COP. The Department does not reduce production cost by the excess because income derived from long-term investments is unrelated to the production of the subject merchandise. *Id.* Using total short-term interest income to reduce production cost, as suggested by CINSA, would permit companies with large short-term investment activity to sell their products below the cost of production and also avoid the full imposition of antidumping duties. Accordingly, the amount of the offset was limited to the amount of the expense from the related activity.

Comment 15: CINSA contends that value-added taxes should be taken into account in the calculation of COP. CINSA argues that the statutory provision concerning COP expressly requires that net home market sales be less than "all costs" of producing the merchandise. CINSA then asserts that since COP includes value added taxes, the corresponding sales prices used for comparison should also include the value added taxes.

Petitioner agrees with CINSA that value-added taxes should be included in COP because it is an actual cost incurred to produce the subject merchandise. Petitioner does not agree that value-added taxes should be included in the comparable home market sales price. Petitioner contends that these value added taxes should be excluded from the net price because the company pays the value added tax to the government.

Petitioner also states that if the Department does include value-added taxes in the home market price, the amount included should be limited to the amount paid on the inputs. Petitioner contends that multiplying the home market net sales price by 15 percent would greatly overstate the amount of any offset to be allowed for value added taxes included in COP.

Department's Position: Value added taxes are paid on inputs and, therefore, are costs incurred in production. Upon the sale of the product, value added taxes are reimbursed to CINSA by the ultimate consumer. Any amount of tax which is in excess of the amount paid is payable to the Mexican government. Therefore, in the final results, an amount of tax equal to that paid by CINSA was added to the cost of production and the home market sales price.

In addition, in our price-to-price comparisons for both CINSA and APSA, we have followed the decision of the United States Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* v. *United States (Zenith Electronics* v. *United States),* Slip Op. 92–1043, –1044, –1045, –1046 (Fed. Cir. March 19, 1993). The court held that section 772(d)(1)(C) of the Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to the U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price.

Furthermore, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rulemaking process as soon as possible.

Comment 16: CINSA contends that ITA improperly determined that purchases of enamel frit from a related supplier did not reflect a fair market value. CINSA claims that its price is above cost of production and the fact that it receives a discount from the published price does not reflect prices below market value. CINSA also contends that there is no information on the record which demonstrates that the sales are not at arm's length.

Petitioner contends that CINSA did not comply with the Department's request for related party price information, and that CINSA's claim for a discount which resulted from volume purchases is unsubstantiated in the administrative record.

Department's Position: We agree with petitioner. Because CINSA's submission indicated that the transfer prices from its related supplier were less than the prices paid by an unrelated purchaser of the same material, we determined that the transfer prices were not made at arm's length. Therefore, in accordance with 773(e)(2) of the Act, we used BIA for constructed value to calculate the cost of the enamel frit used by CINSA. For the purposes of constructed value, the Department based enamel frit cost on CINSA's price to the unrelated purchaser as best information available.

Comment 17: CINSA contends that the Department overstated the amount of profit earned on its home market sales in calculating constructed value because is used gross sales rather than net sales. CINSA contends that the Department did not appropriately account for discounts, rebates, inland freight and insurance. Specifically, CINSA notes that discounts and rebates should have been deducted from the sales price. Conversely, CINSA points out that inland freight and insurance expenses were incorrectly deducted from the sales price as they were included in the COP.

Petitioner argues that if the Department decides to deduct discounts and rebates for purposes of the profit calculation, it should also deduct these amounts for the sales below cost comparisons.

Department's Position: For the final results of the review, we modified cost of production calculations to account for discounts and rebates and revised the profit calculations. To determine the profit earned on home market sales and the sales below cost comparisons, the Department deducted discounts and rebates from the gross selling prices as these amounts represented adjustments to the sales price, in accordance with section 773(e)(1)(B) of the Act. Inland freight and insurance costs are not included in COP and CV, as these are movement expenses. Therefore, they were properly deducted from home market sales.

Comment 18: APSA contends that the Department should use the verified home market interest rate, not the original rate claimed by APSA, to calculate home market credit costs. APSA contends that it incorrectly included short-term export loans in its calculation of the weighted-average home market interest rate, as noted in the Department's verification report. The export loans were obtained through the BANCOMEXT export financing program, which the Department previously determined is directly tied to exports and not home market sales. Porcelain-on-Steel Cookware from Mexico, Final Results of Countervailing Duty Review (57 FR 562, 563; March 13, 1992). APSA argues that since BANCOMEXT loans are directly tied to export sales and are not used to finance domestic sales, they should have been excluded from calculation of the average home market interest rate used for home market sales.

Department's Position: We agree with respondent and have used the verified interest rate.

Comment 19: APSA submits that at the time the Department issued the preliminary results of the fourth antidumping administrative review, the final results of the administrative review of the countervailing duty order covering calendar year 1990 had not yet been issued.

APSA notes that the Department has since published the final results of the countervailing duty administrative review for that year. Therefore, for the final results of the fourth administrative review of the antidumping order, the Department should adjust the U.S. price for sales made by APSA after January 1, 1990, in accordance with section 772 of the Tariff Act.

Department's Position: We agree and have made the adjustments.

Final Results of the Review

As a result of our review, we determine the margins to be:

Manufacturer/exporter	Time period	Margin (percent)
APSA	12/01/89–11/30/90	2.13
CINSA	12/01/89–11/30/90	8.18

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

The cash deposit rate for all other manufacturers or exporters will be 29.52 percent. On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States,* Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States,* Slip O. 93–83, decided that once an "all other: 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 other" rate from the less-than-fair value (LTFV) investigation (or the rate as amended for correction of clerical errors or as result of litigation) in proceedings governed by antidumping duty orders for the purpose 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 other" 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 purpose 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 29.52 percent, the "all others" rate established in the final notice of LTFV investigation by the Department (51 FR 36435 July 5, 1988)

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 administrative review and notice are in accordance with section 751(a)(1) of the Act, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 5, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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[A–559–806]

Final Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters From Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ross L. Cotjanle or Larry Sullivan, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3534 or 482–0114, respectively.

Final Determination

We determine that imports of certain portable electric typewriters from Singapore 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 final estimated margins are shown in the "Suspension of Liquidation" section of this notice. Also, the Department determines that critical circumstances do not exist.

Case History

Since the publication of our preliminary determination (58 FR 7534, February 8, 1993), the following events have occurred: On March 2, 1993, the Department postponed the date of its final determination to June 23, 1993 in response to a request from Smith Corona (58 FR 12025). We received timely requests for a public hearing from the respondent, Smith Corona Corporation ("Smith Corona"), and the petitioner, Brother Industries (USA), Inc. ("Brother"). Case and rebuttal briefs were submitted on May 5 and 12, 1993, respectively.

The Department initialed a proposed suspension agreement with Smith Corona on May 21, 1993, and received comments regarding the proposed suspension agreement from Brother on June 14 and 16, 1993. On June 22, 1993, the Department, having determined that the agreement was in the public interest and that effective monitoring of the agreement was practicable, signed an agreement with Smith Corona suspending this investigation.

On June 25, 1993, the U.S. Court of International Trade ("CIT") issued a temporary restraining order preventing the Department from administering the suspension agreement between it and Smith Corona. On July 12, 1993, the temporary restraining order was partially lifted by the CIT allowing the Department to publish the suspension agreement in the **Federal Register** (see, 58 FR 39786, July 26, 1993).

Pursuant to Smith Corona's and Brother's requests of June 23 and July 27, 1993, respectively, the Department is continuing this investigation in accordance with 19 U.S.C. 1673c(g).

Scope of Investigation

The merchandise covered by this investigation consists of certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria:

(1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;

(2) Electric, regardless of source of power;

(3) Comprised of a single, integrated unit;

(4) Having a keyboard embedded in the chassis or frame of the machine;

(5) Having a built-in printer;

(6) Having a platen to accommodate paper; and

(7) Only accommodating its own dedicated or captive software, if any.

Based on petitioner's request, the Department has decided not to include all types of PETs which were determined to be within the scope of the antidumping order on PETs from Japan in the Department's final scope ruling signed on November 2, 1990 (see 55 FR 47358, November 13, 1990). PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) Seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation.

The PETs subject to this investigation are currently classifiable under subheadings 8469.21.00 and 8469.10.00 of the Harmonized Tariff Schedule ("HTS"). (Note that personal word processors also are classifiable under subheading 8469.10.00.) Although the HTS 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 ("POI") is November 1, 1990, through April 30, 1991.

Standing

We received several submissions from Smith Corona during the period April 29 through July 22, 1991, challenging Brother's standing to file the petition and requesting rescission of the initiation in this investigation. Smith Corona raised two standing issues: (1) Whether Brother is an interested party within the meaning of section 771(9)(C) of the Act and (2) whether Brother filed the petition on behalf of the domestic industry.

With respect to Brother's status as an interested party, on September 3, 1992, the CIT, in Slip. Op. 92–152, reversed the Department's determination of September 25, 1991, that Brother was not an interested party and did not have standing to file a petition against PETs from Singapore. The Department has been directed to determine whether the petition in this proceeding was filed "on behalf of" the domestic industry and, if so, to proceed with the investigation (Slip. Op. 92–211, Nov. 30, 1992). For the reasons discussed below, we determine that Brother has filed its petition on behalf of the U.S. industry.

On April 29, 1991, Smith Corona identified itself as a domestic producer of PETs in opposition to the petition filed by Brother. Where a domestic industry member opposing a petition provides a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing party, or parties, do, in fact, represent a majority of the domestic industry. *Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19005 (May 3, 1989) ("*Antifriction Bearings*"). Therefore, on May 17, 1991, we issued a standing questionnaire to Smith Corona to ascertain: (1) The extent of Smith Corona's relationship with the exporter of the subject merchandise; (2) the extent to which Smith Corona is an importer of the allegedly dumped merchandise; and, (3) the share of domestic production and sales accounted for by Smith Corona.

After our review of Smith Corona's June 6, 1991 response to the standing questionnaire, we determined that more information was needed to complete our analysis. Therefore, on August 14, 1991, we asked both Smith Corona and Brother to submit to the Department the same U.S. production and sales data which they had submitted to the U.S. International Trade Commission ("ITC"). The ITC format was instructive

because it required the parties to report production and sales data separately for both PETs/portable automatic typewriters ("PATs) and portable electronic word processors ("PEWPs").

Based on the production and sales data submitted, we computed the respective shares of U.S. production and sales held by Smith Corona and Brother. These calculations show that the opponent of the petition, Smith Corona, does not represent a majority of U.S. production or sales (measured by volume or value). Therefore, consistent with the policy articulated in *Antifriction Bearings*, we determine that the petition was filed on behalf of the U.S. industry.

In *Antifriction Bearings*, the Department went on to discuss whether the domestic industry should be defined to exclude related parties or importers for standing purposes, as permitted by section 771(4)(B). In previous investigations, the Department has excluded such firms from the industry. See, for example, *Fabricated Automotive Glass from Mexico: Final Determination of Sales at Less than Fair Value*, 50 FR 1906 (January 14, 1985). The Department pointed out in *Antifriction Bearings* that the firms in opposition were wholly-owned subsidiaries of the responding companies.

In this proceeding, we note that the exporter is a wholly-owned subsidiary of Smith Corona. We further note that imports of the subject merchandise account for more than fifty percent of Smith Corona's sales of this product. Smith Corona, however, argues in its case briefs that it believes that its status as an importer or the fact that it has overseas operations, does not exclude it from the domestic industry. Smith Corona asserts that both it and Brother rely on imports to some extent. Citing *Digital Readout Systems*, 53 FR 47844, 47845 (November 28, 1988) and *3.5" Microdisks and Media Thereof from Japan*, 54 FR 6433 (February 10, 1989), Smith Corona claims that the Act allows producers of inputs, offshore assemblers, and U.S. producers with some foreign production functions to be included in the domestic industry.

We do not agree with Smith Corona's assertions. Under the test applied in *Frozen Concentrated Orange Juice from Brazil; Final Determination of Sales at Less than Fair Value*, 52 FR 8324 (March 17, 1987), the high level of Smith Corona's imports leads us to conclude that, while Smith Corona is a U.S. manufacturer of PETs, its interests in this investigation are closely tied to imports of the allegedly dumped PETs, and thus run counter to the imposition of antidumping duties on imports of PETs from Singapore. Therefore, we do not consider Smith Corona to be a member of the domestic industry in this proceeding.

In its case briefs, Smith Corona also argues that the Department improperly focused on domestic products rather than the nature and extent of petitioner's U.S. operations. To determine whether a majority of the domestic industry supports a petition, Smith Corona states that the Department should analyze PET production in terms of actual U.S. content, not on the total number of units sold. Smith Corona argues that this type of analysis is preferred over a simple count of the typewriters produced. While the Department may not find this method warranted in all cases, Smith Corona asserts that it should implement it in cases, like this one, where a product is assembled from globally-sourced parts and where the petitioner's own U.S. content is low.

Brother argues that Smith Corona has failed to show the uniqueness of this case. Therefore, Brother contends that the Department should not be required to adopt a new approach to analyze standing. Further, Brother argues that the approach proposed by Smith Corona has no legal support in the statute, its legislative history, the Department's regulations, or any other legal precedent.

We are not persuaded that we should make the novel adjustment requested by Smith Corona, i.e., weight the production figures according to the percentage of U.S. value-added. Smith Corona has not cited, nor can we find, any precedent for defining a U.S. industry in terms of the U.S. value added to its product. Nor do we find any statutory basis for doing so. Indeed, the legislative history indicates that the criteria by which we determine Brother's standing should be applied "to provide an opportunity for relief for an adversely affected industry and to prohibit petitions filed by persons with no stake in the result of the investigation" S. Rep. No. 249, 96th Cong., 1st Sess., 63. In this instance, Brother is a U.S. producer representing a substantial share of the industry's output and Brother clearly has a "stake" in the outcome of the proceeding. Hence, the standing criteria may not be used to defeat Brother's claim for protection from imports that are alleged to be unfairly traded.

Such or Similar Comparisons

We established one such or similar category of merchandise in accordance with section 771(16) of the Act: portable electric typewriters. For all PETs, comparisons were made solely on the basis of: (1) Type of PET; (2) memory capacity; (3) display screen; (4) display capacity; (5) printing mechanism; and (6) dictionary features. We used third country sales as the basis for foreign market value ("FMV") for Smith Corona, as described below in the "Foreign Market Value" section of this notice.

Because there was no identical merchandise sold in the third country market to compare to sales of merchandise in the United States, sales of the most similar merchandise based on the characteristics described above were used. In determining which merchandise was similar, we limited our comparisons to products sold in the third country that had difference in merchandise adjustments which were less than 20 percent of the total cost of manufacturing for the U.S. merchandise.

Finally, we compared merchandise at the same level of trade. In both the U.S. and U.K. markets, we determined that there were two levels of trade, i.e., retail and wholesale. We also determined that there were sufficient sales in the U.K. market at both levels of trade on which to base our analysis.

Fair Value Comparisons

To determine whether sales of PETs from Singapore to the United States were made at less than fair value ("LTFV"), we compared United States price ("USP") to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

In calculating USP, the Department determined that it was appropriate to use exporter's sales price ("ESP") methodology for all sales in accordance with section 772(c) of the Act. For a further discussion of this issue, see *DOC Position* to Comment 4 in the *Interested Party Comments* section of this notice.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, containerization, foreign inland freight, ocean freight, marine insurance, U.S. customs duties, U.S. inland freight (U.S. warehouse to customer), U.S. handling, freight credits, cash discounts, rebates, key city allowances, direct from invoice advertising credits, and sales allowances in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for credit, advertising accrual rebates, promotional allowances, prep allowances,

warranties, commissions, and indirect selling expenses, including warehousing, product liability premiums, corporate advertising, inventory carrying costs, and U.S. indirect selling expenses in accordance with section 772(e) of the Act.

We added to USP the amount of value-added tax which was incurred on "ESP" sales made in the market in which we determined foreign market value (i.e., the U.K.). The Department's policy is to add to U.S. price the absolute amount of tax, if any, on the merchandise sold in the market chosen for product comparison purposes. By adding the amount of tax in the comparison market to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price. See, e.g., *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 25803 (April 28, 1993).

We have included in our USP calculations certain sales transactions reported by Smith Corona in a separate database as "exceptions." Those transactions include closeout sales, sales of discontinued models, employee sales, consignment sales, and free goods. We included closeout sales and sales of discontinued models in our calculation of USP because the Department does not ignore U.S. sales on the basis of obsolescence. See, e.g., *Portable Electric Typewriters from Japan; Final Results of Antidumping Duty Administrative Review;* 56 FR 14072 (April 5, 1991). Although Smith Corona argued that "employee sales" are sales to related parties and should not be included in the USP analysis, the Department's practice is to include this type of transaction in our analysis. See, *Television Receiving Sets, Monochrome and Color, From Japan; Final Results of Administrative Review of Antidumping Finding* 46 FR 30163 (June 5, 1981). In addition, sales made to Puerto Rico were included in the U.S. sales data base.

During verification we found minor clerical errors in Smith Corona's reported U.S. data base. These errors were not of the magnitude to draw into question the overall validity of the data reported. Therefore, we have determined it appropriate to use the data as verified, with the following minor adjustments.

For those U.S. sales reported by Smith Corona as purchase price transactions, but reclassified by the Department as ESP transactions, data for various indirect selling expenses were missing. Based on the indirect selling expenses reported for Smith Corona's other ESP sales, we have assigned indirect selling expenses to these transactions.

For certain U.S. sales, Smith Corona did not report movement expenses. For these transactions, as best information available, we have used the highest per unit movement expenses incurred by Smith Corona for sales from the same warehouse.

Finally, we have adjusted Smith Corona's U.S. database for other minor discrepancies found on verification, e.g., prep allowance and warranty expenses (for those sales without reported service allowances). For a detailed explanation of the above adjustments made to U.S. price, as well as those which were denied, see Memorandum to Management from Team, dated July 29, 1993, on file in the Central Records Unit, B–099, of the Department of Commerce.

Foreign Market Value

In order to determine whether there were sufficient sales of such or similar merchandise in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of such or similar merchandise to the volume of third country sales of such or similar merchandise. Smith Corona's home market sales were less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with § 353.48 of the Department's regulations. In accordance with section 773(a)(1)(B) of the Act, we calculated FMV based on third country sales.

In selecting which third country market to use for comparison purposes, we followed 19 CFR 353.49(b). Accordingly, we selected the U.K. because (1) it had the largest volume of sales to any third country, and (2) the market, in terms of organization and development, is most like the United States. The Department did not base its selection of the U.K. on the first factor listed in the regulation, because the Department had no information with which to compare the similarity of the merchandise sold to other third country markets to the merchandise sold in the United States. Furthermore, we determined that the volume of sales to the U.K. market was adequate within the meaning of 19 CFR 353.49(b)(1) because the sales of such or similar merchandise exceeded five percent of the volume sold to the United States.

We calculated FMV based on packed, delivered prices to unrelated customers in the U.K. We made deductions, where appropriate, for foreign brokerage, foreign inland freight, containerization, ocean freight, marine insurance, U.K. inland freight (U.K. warehouse to customer), rebates, other allowances, cash discounts, a customer-specific discount, and commissions. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

We made further deductions for third country indirect selling expenses, including warehousing, inventory carrying costs, product liability premiums, corporate advertising, U.S. indirect selling expenses incurred on behalf of U.K. sales, and U.K. indirect selling expenses, capped by the amount of indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

We have excluded sample sales in calculating FMV because Section 773 of the Tariff Act of 1930, as amended, requires that FMV be based on sales made in the ordinary course of trade. These sample sales in the U.K. were transferred free of charge. Therefore, we consider these sample sales not to be in the ordinary course of trade and have disregarded them in the calculation of FMV. See, e.g., *Antifriction Bearings*, at 19087.

During verification we found minor clerical errors in Smith Corona's reported U.K. data base. These errors were not of the magnitude to draw into question the overall validity of the data reported. Therefore, we have determined it appropriate to use the data as verified, with the following minor adjustments.

We have deleted the expense category for U.K. forwarder's fees from the U.K. data base because we found on verification that this expense had also been reported as part of U.K. indirect selling expenses. We have also adjusted the period used to calculate inventory carrying costs for air freight shipments based on verified information.

In addition, we have adjusted Smith Corona's U.K. database for other minor errors found on verification, e.g., U.K. warehousing expenses, U.K. freight expenses, and U.K. rebate amounts. For a detailed explanation of the above adjustments made to U.K. price, as well as those which were denied, see Memorandum to Management from Team, dated July 29, 1993, on file in the Central Records Unit.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of PETs from Singapore. Section 735(a)(3) of the Act provides that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(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 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.

With respect to section 735(a)(3)(A)(i) of the Act regarding a history of dumping, petitioner cites the Department's outstanding antidumping order on *Portable Electric Typewriters from Japan*. However, as discussed in our preliminary determination, an outstanding dumping determination involving a class or kind of merchandise from another country does not show a history of dumping of the merchandise subject to this investigation.

In order to impute knowledge pursuant to section 735(a)(3)(A)(ii) of the Act, the Department examines the magnitude of the dumping margins in the investigation. It is the Department's standard practice to impute knowledge of dumping when the margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, when dealing with exporter's sales price sales, margins of 15 percent or greater are sufficient to impute knowledge of dumping. Because the final dumping margin for Smith Corona exceeds 15 percent, we find that the importers knew or should have known that this company was selling the subject merchandise at less than fair value.

To determine whether imports have been massive over a short period of time pursuant to section 733(e)(1)(B) of the Act, we generally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. See, e.g., *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083 (July 9, 1993), and *Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988). Normally, to determine whether imports have been massive we compare the export volume for the base period, which is a period of not less than three months beginning with the month the petition was filed (provided that the petition was filed before the mid-way point in the month), with an immediately previous period of comparable duration.

We have determined that our normal methodology is inappropriate in this proceeding. The purpose of the critical circumstances provision is to deter exporters whose merchandise is subject to an investigation from circumventing the imposition of antidumping duties by increasing exports to the United States during the period immediately prior to suspension of liquidation of entries. This deterrence is effected through a retroactive suspension of liquidation for 90 days prior to the preliminary determination. Thus, in a "normal" investigation the base period is roughly contemporaneous with the period covered by the retroactive suspension of liquidation.

Unlike the normal investigation, in this investigation 21 months elapsed between the initiation and the preliminary determination. Therefore, the period around the time of initiation is in no way contemporaneous with the period that would be covered by a retroactive suspension of liquidation, and is not just prior to suspension of liquidation. For these reasons, we have decided to use as our base period for determining whether critical circumstances exist, the period following the CIT's September 3, 1992 decision (Slip Op. 92–152). The CIT's decision served as notice of the eventual resumption of the antidumping proceeding and the possibility that future entries may be subject to antidumping duties. Therefore, in terms of the expectations of the parties subject to this investigation, the CIT's decision was similar to the filing of a petition.

Because we were able to obtain and verify data for the five-month period between the court's decision and our preliminary determination, we compared the volume of imports between September 1992 and January 1993 (the month of our preliminary determination), with a commensurate period prior to the court's decision. On this basis, we find that imports have not been massive. Therefore, we determine that critical circumstances do not exist with respect to imports of the subject merchandise from Singapore.

Currency Conversions

We made currency conversions based on the official exchange rates certified by the Federal Reserve Bank in effect on the dates of the U.S. sales.

Verification

As provided in section 776(b) of the Act, we verified the information provided by Smith Corona by using our standard verification procedures, including the examination of relevant sales and financial records and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

Smitn Corona argues that the fluctuation in the U.S. dollar—U.K. pound exchange rate should not be the cause of an affirmative determination of LTFV sales. It asserts that the appreciation of the dollar-pound exchange rate during the Gulf War, which coincided with the POI, was recognized as a short-lived phenomena after which the exchange rate returned to its pre-war level. Smith Corona states that because the fluctuation in exchange rates was a short-term phenomena and the exchange rates were returning to "normal," it did not believe it was necessary to adjust its prices during the POI or for the next fiscal year.

Smith Corona argues that the Court of Appeals for the Federal Circuit ("CAFC") and the Department's regulations provide that the Department will not take into account dumping margins resulting solely from temporary exchange rate fluctuations. *Melamine Chemicals, Inc.* v. *United States*, 732 F.2d 924, 932 (1984); 19 CFR 353.60(b). Smith Corona states that if the exchange rates in effect prior to the Gulf War are used, all or almost all of the dumping margin is eliminated. It suggests that the Department use an average exchange rate which excludes the aberrational rates in effect during the Gulf War.

Brother argues that Smith Corona is not entitled to any adjustment for a fluctuation in the exchange rate whether the exchange is considered "sustained" or "temporary." Citing *Coated Groundwood Paper from the United Kingdom; Final Determination of Sales at Less than Fair Value*, 56 FR 56403 (November 4, 1991)("*Groundwood Paper from the U.K.*"), Brother notes that the Department considered the impact of the Gulf War and decided that the exchange rate fluctuation during the period of investigation was sustained rather than temporary.

Brother argues that the Department should continue to find the fluctuation

in the U.S. dollar—U.K. pound exchange rate during the POI to be sustained and conclude that Smith Corona is not entitled to any special currency conversions because it did not act to change any of their pricing practices. If, however, the Department determines that the exchange rate fluctuation was temporary, Smith Corona is not entitled to any exchange rate adjustment because, as admitted to by Smith Corona, the antidumping margin does not result solely from such exchange rate fluctuation, as required by the regulations.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

> For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any differences between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, e.g., *Final Determination of Sales at Less Than Fair Value; Malleable Cast Iron Pipe Fittings From Japan* 52 FR 13855 (April 27, 1987.))

We will also adjust the methodology we employ, if we determine that temporary exchange rate fluctuations have occurred during the POI (i.e., the daily rate varies from the quarterly average rate by more than five percent). (See, e.g., *Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from the Federal Republic of Germany* 52 FR 822 (January 9, 1987.)) However, we do not interpret the special rule outlined in 19 CFR 353.60 (b) as envisioning the treatment of an entire POI as a temporary fluctuation (see, e.g., *Groundwood Paper from the U.K.*).

In *Groundwood Paper from the U.K.*, the exchange rate fluctuation during the Gulf War was examined to determine whether it was of a temporary nature. In that case we determined that the "movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the pound that, while not entirely steady, (i.e., on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI." Upon examination of the data in the present case, we have reached the same conclusion as in *Groundwood Paper from the U.K.* Since Smith Corona did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations is warranted.

Comment 2

Smith Corona asserts that the Department improperly compared such or similar merchandise. In addition to the seven "matching" criteria used by the Department, respondent argues, that the Department should consider additional factors such as model year and channel of distribution. Smith Corona provided the Department with three criteria which it contends would enable the Department to ensure that the comparison merchandise is "approximately equal in commercial value" in accordance with 19 U.S.C. 1677(16)(B)(iii).

Smith Corona argues that in determining whether merchandise is approximately equal in commercial value, the Department considers commercial and physical interchangeability (*see Malleable Cast Iron Pipe Fittings from Brazil*, 51 FR 10897 (1986)). For example, while production of the private label machines does not involve any difference in costs, there is significant commercial difference between the private label machines and the other product lines. Thus, they are not "approximately equal in commercial value." Smith Corona asserts that price comparisons should also be made between machines which are of the same product line (i.e., which is synonymous with channel of distribution).

Brother argues that the Department should continue to apply the matching criteria used in the preliminary determination and not use as additional criteria the trivial characteristics advocated by Smith Corona (i.e., model year, size of jacket, and product line). Brother contends that the minor product characteristics cited by Smith Corona are properly adjusted for via a difference-in-merchandise adjustment. Brother asserts that the difference in manufacturing costs does not render these machines non-comparable to other machines which fall into the same basic PET category. Furthermore, Brother contends that the Department's practice is to make its such or similar merchandise selections on differences in physical characteristics, not on differences in prices. Brother claims that the Department stated in *Certain Forced Steel Crankshafts from the United Kingdom; Final Results of Antidumping Duty Administrative Review, ("Crankshafts from the U.K.")*, 56 FR 5975 (February 14, 1991) that "under section 771(16)(c), the Department has the discretion to make reasonable comparisons without regard to commercial value."

Lastly, Brother claims that in *Stainless Steel Hollow Products from Sweden; Final Administrative Review*, 57 FR 21389 (May 20, 1992), the Department rejected the argument that channel of distribution be added as a criteria in matching such or similar merchandise. It stated that "there is no regulatory basis for comparing identical channels of distribution."

DOC Position

We agree with petitioner. Colors, labels, and jacket sizes are "cosmetic" characteristics and, thus, were not included in the Department's product concordances. To the extent that these characteristics may have resulted in slight differences in cost of production, a difference in merchandise adjustment, rather than a change in matching criteria, would be appropriate.

The commercial value of these characteristics is not relevant to our product comparisons. The Department has previously rejected claims that "such or similar" comparisons should be adjusted to take into account differences in commercial value. As the Department noted in *Crankshafts from the U.K.*,

> We also note that although the statute makes reference to commercial value in section 771(16)(B), we disagree with UEF's argument that this requires the Department to consider differences in prices in making such or similar comparisons. There are many reasons why prices may differ, including the existence of dumping * * *

The CIT has affirmed the Department's policy of not considering commercial value in selecting comparison merchandise. *United Engineering and Forging* v. *United States*, 779 F. Supp. 1375, 1381 (1991).

Furthermore, channel of distribution is not a proper merchandise comparison criterion. The Department has, as Brother notes, stated that "there is no regulatory basis for comparing identical channels of distribution." See, e.g., *Stainless Steel Hollow Products from Sweden; Final Results of Administrative Review*, 57 FR 21389 (May 20, 1992).

Comment 3

Smith Corona argues that the Department should take into account

the different levels of trade in making its sales comparisons. It states that the levels of trade can be broken into three groupings: small office equipment dealers, national retail chains, and those in between. These levels purchase different quantities of machines and should be segregated for purposes of product comparison.

Smith Corona contends that the Department's regulations and past precedent require the Department to compare merchandise at a comparable level of trade (see 19 CFR 353.58; and, e.g., *NTN* Bearing Corp. v. *United States*, 747 F. Supp. 726, 743 (CIT 1990)). A review of the prices reveals a distinction directly related to the level of trade.

Brother claims that where the Department has distinguished between levels of trade, those distinctions have been between wholesalers and retailers. The distinction requested by Smith Corona is between types of retailers. In *Television Receiving Sets, (Monochrome and Color), from Japan: Final Results of Administrative Review of Antidumping Finding*, 46 FR 30163 (June 5, 1981), Brother asserts that the Department stated that it generally considers all retail outlets to be at the same level of trade because they serve the same sector of the population—end-users. Brother requests that the Department continue to consider all sales to be at the same level of trade.

DOC Position

The Department's regulations at 19 CFR 353.58 state that "[t]he Secretary normally will calculate foreign market value and the United States price based on sales at the same commercial level of trade." The Department's policy and practice, as outlined in *Import Administration Policy Bulletin Number 92/1: Matching at Levels of Trade*, is to match at the same level of trade, provided that the respondent reports levels of trade with distinct, discernible functions.

Based on these guidelines, we have determined that Smith Corona's U.S. sales occur at two levels of trade, i.e., retail and wholesale. While Smith Corona's selling practices may vary in certain aspects based on the type of retailer, all the retailers have the same function which is to sell to end-users. In the U.K., we also have determined that there are two levels of trade, i.e., wholesale and retail. In addition, we have established that there were sufficient U.K. sales at each of these levels made during the POI to allow us to match all U.S. sales to retailers with U.K. sales to retailers and all U.S. sales to wholesalers with U.K. sales to wholesalers. We have determined that no further distinction based on level of trade is appropriate here.

Comment 4

Brother contends that the purchase price sales reported by Smith Corona are misclassified. Brother asserts that because of their misclassification, none of the expenses specifically incurred for these sales are captured or allocated to such sales. These sales should be treated by the Department as ESP transactions and all expenses related to these sales should be accounted for in the Department's calculations.

DOC Position

We agree with petitioner. At verification, it became clear that all activities directly and indirectly related to the sales of PETs in the United States were conducted by Smith Corona's related U.S. company. We also verified that Smith Corona Private, Ltd. in Singapore did not incur any selling expenses related to its sales in the United States. Given that Smith Corona's related U.S. company acted as much more than a processor of sales-related documentation, we believe that the use of ESP to determine U.S. price is appropriate. (See, e.g., *Final Determination of Sales at Less Than Fair Value; New Minivans from Japan*, 57 FR 21937 (May 26, 1992.)

Comment 5

Petitioner contends that the Department improperly determined that critical circumstances do not exist with respect to imports of PETs from Singapore. Petitioner argues that to impute knowledge in a particular case it is not appropriate to weight-average the purchase price and ESP sales but to examine which is the predominant type of sale. Whichever type of sale is predominant, the Department should presume knowledge based on the margin associated with that type of transaction.

DOC Position

Based on our reclassification of all purchase price sales as ESP, this issue has become moot. We are using the 15 percent benchmark normally applied to ESP transactions in order to determine a presumption of knowledge of dumping.

Continuation of Suspension of Liquidation

The U.S. Customs Service will continue to suspend liquidation of all entries of PETs from Singapore, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, until instructions are issued by the Department liquidating entries pursuant to the suspension agreement. If the suspension agreement is terminated in the future, we will then instruct the U.S. Customs Service to require a cash deposit 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 weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Smith Corona PTE Ltd	15.51
All others	15.51

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: August 6, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19720 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–825]

Initiation of Antidumping Duty Investigation; Sebacic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–1766.

Initiation Investigation

The Petition

On July 19, 1993, we received a petition filed in proper form by Union Camp Corporation (petitioner). Petitioner submitted an amendment to the petition on August 2, 1993. In accordance with 19 CFR 353.12, the petitioner alleges that sebacic acid from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and the petition is filed on behalf of the only U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The products covered by this investigation are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$, which include, but are not limited to, CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum APHA color). The principal difference between the grades is the undesirable quantities of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.00, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on a March 1993 invoice from a U.S. importer of the subject merchandise from the PRC. In calculating USP, petitioner deducted an amount for ocean freight.

Petitioner, alleging that the PRC is a non-market economy country within the meaning of section 773(c) of the Act, based foreign market value on its factors of production during March 1993 for producing the subject merchandise.

To value the factors of production, petitioner used India and Pakistan as surrogates with comparable economies to the PRC even though there is no evidence on the record that they are significant producers of comparable merchandise, pursuant to section 773(c)(4) of the Act. For purposes of this initiation, we have accepted India and Pakistan as appropriate surrogate selections because there appear to be no other countries with comparable economies to the PRC that produce the subject merchandise. In addition, we have used India and Pakistan as appropriate surrogate selections in other investigations involving merchandise from the PRC. (See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China (57 FR 29705, July 6, 1992). Petitioner, therefore, first attempted to value the factors of production using Indian information. Where this was not possible, petitioner valued the factors of production using Pakistani information before using its own costs. Petitioner valued the factors of production of the subject merchandise in the PRC as follows:

- For castor oil, activated carbon, and caustic potash, natural gas, electricity, and labor, petitioner used values and rates from Indian publicly available published information.
- For caustic soda and sulfuric acid, petitioner used values from a U.S. unclassified cable from the U.S. consulate in Pakistan.
- For crude capryl and steam, petitioner used it own costs.
- For selling, general and administrative expenses (SG&A), petitioner used the statutory minimum of ten percent of the cost of production.
- For profit, petitioner used the statutory minimum of eight percent of the cost of manufacture plus SG&A expenses.

Based on petitioner's calculations, the dumping margin is 243.40 percent. For purposes of this initiation, no adjustments were made to petitioner's calculations.

Initiation of Investigation

We have examined the petition on sebacic acid and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of sebacic acid from the PRC are being, or are likely to be, sold in the United States at less than fair value.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by September 2, 1993, whether there is a reasonable indication that imports of sebacic acid from the PRC are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in a termination of the investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: August 9, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19719 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Jude Kearney, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal

government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–2A001".

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 92–00001, which was issued on April 10, 1992 (57 FR 13707, April 17, 1992), and previously amended on September 8, 1992 (57 FR 41920, September 14, 1992).

Summary of the Application

Applicant: Aerospace Industries Association of America, Inc. ("AIA"), 1250 Eye Street, NW., Washington, DC 20005. Contact: Mac S. Dunaway, Esquire, telephone: (202) 862–9700.

Application No.: 92–2A001

Date Deemed Submitted: August 11, 1993

Request for Amended Conduct

AIA seeks to amend its Certificate to add each of the following companies as "Members" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2 (1)): CTA Incorporated, Rockville, MD; Digital Equipment Corporation, Marlboro, MA; Dupont Company, Wilmington, DE; Edwards Aerospace, Inc., Irving, TX (Controlling Entity: Edwards Technology, Inc., Irving, TX); Loral Vought Systems Corporation, Dallas, TX (Controlling Entity: Loral Corporation, New York, NY); Reflectone, Inc., Tampa, FL; and Vought Aircraft Company, Dallas, TX.

Dated: August 10, 1993.

Jude Kearney,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 93–19723 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Dean John A. Knauss Marine Policy Fellowship; Applications

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dean John A. Knauss Marine Policy Fellowship; open for applications.

SUMMARY: In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to one of the state Sea Grant College Programs in their area.

FOR FURTHER INFORMATION CONTACT: Dr. Bernard L. Griswold, Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1335 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 713–2431 or call your nearest Sea Grant program:

University of Alaska—(907) 474–7086
University of California—(619) 534–4440
University of Connecticut—(203) 445–3457
University of Delaware—(302) 831–2841
University of Florida—(904) 392–5870
University of Georgia—(706) 542–7671
University of Hawaii—(808) 956–7031
University of Illinois—(217) 333–1824
Louisiana State University—(504) 388–6710
University of Maine—(207) 581–1436
University of Maryland—(301) 405–6371
Massachusetts Institute of Technology—(617) 253–7131
University of Michigan—(313) 763–1437
University of Minnesota—(612) 625–2765
Mississippi-Alabama Sea Grant Consortium—(601) 875–9341
University of New Hampshire—(603) 749–1565
New Jersey Marine Science Consortium—(908) 872–1300
State University of New York—(516) 632–6905
University of North Carolina—(919) 515–2454
The Ohio State University—(614) 292–8949
Oregon State University—(503) 737–3396
University of Puerto Rico—(809) 832–3585
Purdue University—(317) 494–3622
University of Rhode Island—(401) 792–6800
South Carolina Sea Grant Consortium—(803) 727–2078
University of Southern California—(213) 740–1961
Texas A&M University—(409) 845–3854
Virginia Graduate Marine Science Consortium—(804) 924–5965
University of Washington—(206) 543–6600
University of Wisconsin—(608) 262–0905
Woods Hole Oceanographic Institution—(508) 548–1400 ext. 2578.

SUPPLEMENTARY INFORMATION:

Purpose of the Fellowship Program

In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The U.S. Congress recognized the value of this program and in 1987, Public Law 100–220 stipulated that the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows.

Announcement

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the state Sea Grant Director upon receipt of notice from the National Sea Grant College Program Office (NSGCPO). A brochure describing the program is also available from the NSGCPO for distribution by both that office and the state Sea Grant programs.

Eligibility

Any student who, at the time of application, is in a master's, doctoral or professional program in a marine related field from any accredited institution of higher education may apply to the NSGCPO through any state Sea Grant program.

Deadlines

• Students must submit applications to the state Sea Grant Director, who will be the applicant's sponsor, by the date set by the Directors in their individual program announcement (usually early to mid-September).

• Applications are to submitted to the NSGCPO by the sponsoring state Sea Grant Director, no later than close of business on September 30th of any given year.

• The competitive selection process and subsequent notification will be completed by October 31st of any given year.

Stipend and Expenses

For 1994 a Fellow will receive a stipend amount of $24,000.

Application

An application will include:

• Personal and academic resume or curriculum vitae.

• Personal education and career goal state which emphasizes expectations from the experience in the way of career development. (not to exceed 2 pages)

• No more than two letters of recommendation with at least one being from the student's major professor.

• A letter of endorsement from the sponsoring state Sea Grant Director.

• Copy of undergraduate and graduate student transcripts. Thesis papers are not desired.

It is our intent that all applicants be evaluated only on their ability, therefore letters of endorsements from members of Congress, friends, relatives or other will not be considered.

Placement preference in the Executive of Legislative Branches of the Government may be stated, and will be honored to the extent possible.

Selection Criteria

The selection criteria will include:

• Strength of Academic Performance.

• Communication Skills (both written and verbal).

• Diversity of Academic Background.

• Work Experience.

• Support of Major Professor.

• Support of Sea Grant Director.

• Ability to Work with People.

Selection

Selection of finalists will be made by a panel chaired by the Director of Federal Fellowships of the NSGCPO and include representation from (1) the Council of Sea Grant Directors, (2) the Office of the Assistant Administrator for Oceanic and Atmospheric Research, and (3) the current and possibly past group of Fellows. The individuals representative of these groups will be chosen on a year by year basis according to availability, timing, and other exigencies. Selection of finalists by the panel will be done according to the criteria outlined above. After selection, the panel will group applicants into the two categories, legislative and executive, based upon the applicant's stated preference and/or judgment of the panel based upon material submitted. The number of fellows assigned to the Congress will be limited to 10.

Dated: July 15, 1993.

David B. Duane,

Deputy Assistant Administrator for Extramural Research, Office of Oceanic and Atmospheric Research.

[FR Doc. 93–19592 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 081093A]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a public meeting of its Vessel Monitoring System (VMS) Committee on August 20, 1993, in the Conference Room of the Pacific Ocean Producers, 965–B N. Nimitz Hwy., Honolulu, HI. The meeting will begin at 1 p.m.

The VMS Committee will discuss and possibly make recommendations to the Council regarding:

(1) Status of the Council's VMS program;

(2) The effect of a recent National Marine Fisheries Service (NMFS) biological opinion on the Council's VMS program;

(3) Report on the NMFS' Hawaii VMS experiment; and

(4) Other issues as needed.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 541–1974.

Dated: August 10, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19611 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License

AGENCY: Office of the Army Judge Advocate General, DOD.

ACTION: Notice.

SUMMARY: In compliance with 37 CFR 404.4, the Department of the Army hereby gives notice of its intent to grant to Alpha 1 Biomedicals, Inc., a corporation having its principal place of business at Two Democracy Center, 6903 Rockledge Drive, suite 1200, Bethesda, MD 20817, an exclusive license under PCT Application No. PCT/US 93/06485 designating all PCT countries and corresponding applications filed or to be filed in Argentina, Chile, China, Indonesia, Malaysia, Mexico, Philippines, South Africa, Taiwan, Thailand, and Venezuela. All of the preceding applications are based upon U.S. Patent Application Serial No. 07/914,673 entitled "Composition and Method of Treating Hepatitis B" filed 13 July 1992. 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.

DATES: October 15, 1993.

ADDRESSES: Intellectual Property Law Division, Office of the Judge Advocate General, 901 North Stuart Street, Arlington, VA 22203–1837.

FOR FURTHER INFORMATION CONTACT: Earl T. Reichert, (703) 696–8113.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–19584 Filed 8–13–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Domestic Issues Task Force will meet August 24, 1993, from 9 a.m. to 4 p.m., in Alexandria, Virginia.

The purpose of this meeting is to continue efforts to forecast emerging demographic and sociological trends and their effect on the Navy of the future. The agenda of the meeting will consist of discussions about managing diversity, demographics, and personnel within the Navy.

For further information concerning this meeting, contact: J. Kevin Mattonen,

Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, VA 22302–0268, Phone (703) 756–1205.

Dated: August 3, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–19581 Filed 8–13–93; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Cases Filed During the Week of July 9 Through July 16, 1993

During the Week of July 9 through July 16, 1993, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 9, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

REFUND APPLICATIONS RECEIVED

[Week of July 9 through July 16, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
06/30/93	Patterson Canal.	RF346–55
07/07/93	ARA Services, Inc.	RF300–21748
07/07/93	Farmland Industries, Inc.	RF352–1
07/08/93	Learjet, Inc	RF272–94786
07/09/93	Boise City Farmers Co-op.	RF272–94787
07/09/93 thru 07/16/93.	Atlantic Richfield refund applications received.	RF304–14224 thru RF304–14234

REFUND APPLICATIONS RECEIVED—Continued

[Week of July 9 through July 16, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
07/09/93 thru 07/16/93.	Beacon Oil refund applications received.	RF238–130 thru RF238–152
07/09/93 thru 07/16/93.	Texaco Oil refund applications received.	RF321–19794 thru RF321–19800
07/12/93	Stanley Ivy Trucks.	RC272–206
07/12/93	Ronald Reeves.	RF272–94788
07/12/93	Yale Transportation Co.	RC272–208
07/12/93	Wells Cargo, Inc.	RF272–207
07/13/93	Lytle Feed & Seed.	RF272–94789
07/13/93	W.S. Thompson Transfer Inc.	RC272–209
07/14/93	Johnston Construction Co.	RC272–210
07/15/93	Fuels, Inc	RF300–21749
07/16/93	Armando Tundidor.	RF349–4

[FR Doc. 93–19705 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–P

Award Based on Acceptance of an Unsolicited Application; EOP Foundation, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Atlanta Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to EOP Foundation, Inc., to conduct research to identify which National Policy Initiatives should be undertaken to enhance the use of Integrated Resources Planning (IRP).

FOR FURTHER INFORMATION CONTACT: Warren Zurn, U.S. Department of Energy, Atlanta Support Office, 730 Peachtree Street NE., Atlanta, GA 30308, (204) 347–1047.

SUPPLEMENTARY INFORMATION: DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to EOP Foundation, Inc., would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). The advantage offered by selecting this party is that, of the few available practitioners that can contribute to this field, EOP Foundation, Inc., has the unique mating of experience to work required that would make them productive immediately, at the highest comparative rate of cost effectiveness.

The project period for this grant is 10 months. DOE plans to provide FY 1993 funding in the amount of $50,000.

Issued in Chicago, Illinois, on August 5, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19712 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Council of Great Lakes Governors

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the Chicago Support Office, announces, that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to award a grant to the Council of Great Lakes Governors. The award represents continued funding under the U.S. Department of Energy Regional Biomass Energy Program. The objective of this project is to build and maintain the capacity of state energy, forestry, and environmental quality offices to responsibly promote biomass technologies and promote responsible use of biomass energy in the seven states in the Great Lakes region.

SUPPLEMENTARY INFORMATION: The office of the Council of Great Lakes Governors, comprised of seven states, is responsible for the administration and staffing of the Great Lakes Regional Biomass Energy Program (GLRBEP). The GLRBEP has three basic components. A state grant component provides funds (with a 50/50 matching requirement) to each of the states in the region to strengthen and integrate the work of state agencies involved in biomass energy. The applied research and Technology Transfer Program component produces a series of technical reports and studies in areas that have been identified as being important to the development of biomass energy in the region. The third component is a long range planning effort, with substantial involvement from the private sector, to identify

activities necessary to spur greater development and use of biomass energy in the Great Lakes Region.

The grant is being accepted by DOE because DOE knows of no other organization that is conducting or planning to conduct this type of effort in promotion of the use of biomass energy in the Great Lakes region. The project period for the award is 12 months, expected to begin in September 1993. DOE plans to provide funding in the amount of $694,000.

FOR FURTHER INFORMATION CONTACT: Melinda J. Harris; U.S. Department of Energy; Chicago Support Office; 9800 South Cass Avenue; Building 201; Argonne, Illinois 60439; (708) 252–2224.

Issued in Chicago, Illinois, on August 4, 1993.

M.A. Broderick,

Deputy Director, Operations Management Support Division.

[FR Doc. 93–19709 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

Award Based on Acceptance of an Unsolicited Application; Lof Energy Systems, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the Denver Support Office (DSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Lof Energy Systems, Inc.; for developing and further demonstrating the energy savings of an automatic cover for an institutional-sized indoor swimming pool.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Lof Energy Systems, Inc., would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Prior to the inventor's work, the subject invention did not exist. The DOE has determined in accordance with 10 CFR 600.14(f), that the application submitted by Lof Energy Systems Incorporated is meritorious based on the general evaluation required by 10 CFR 600.14(d).

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention pertains to further development of the design and use of an automated pool-covering system. Documenting the energy savings in a large institutional pool should improve the commercial viability of the automatic pool-cover system capable for use in large institutional pools and natatoriums.

The project period for the grant award is 18-months, expected to begin in October, 1993. DOE plans to provide funding in the amount of $83,310.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Chicago Operations Office, Denver Support Office, 2801 Youngfield Street, suite 380, Golden, Colorado 80401–2266, Dennis D. Maez, Contract Specialist, (303) 231–5750, Extension 140.

Issued in Chicago, Illinois, on August 5, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19711 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award to the National Conference of State Legislatures

AGENCY: Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: "Energy Efficiency Options for State Legislatures." The U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, through the DOE, Chicago Operations Office, Denver Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(6)(2), it intends to award on a non-competitive basis, a cooperative agreement with the National Conference of State Legislatures (NCSL), Denver, Colorado. This action is authorized by Public Law 95–91 and Public Law 94–163. The Energy Policy Act of 1992 contains options for energy efficiency and renewable energy, many of which will be implemented by State Governments. The objective of the Cooperative Agreement is to stimulate adoption of energy efficiency, and encourage the adoption of renewable energy technologies. It is also intended to stimulate State governments, local governments and legislatures to implement State related titles of the Energy Policy Act of 1992 (EPACT), and to encourage the participation of States in the EPACT provisions that are under the domain of State government. The Department would provide funding to assist NSCL with the dissemination of energy efficiency and renewable energy technologies information. The authority and justification for determination of non-competitive financial assistance is DOE Financial Assistance Rule 10 CFR 600.7(b)(2)(i) (A) and (D). In addition, the activities to be funded are a continuation of activities presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activities. The applicant has exclusive domestic capability to perform this activity based on the unique nature of the organization. No other national legislative organization exists which is governed by the State legislatures and directly funded by contributions from general tax revenue of the 50 States. The estimated cost for the two year project period is expected to be approximately $500,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Chicago Operations Office, Denver Support Office, 2801 Youngfield Street, Suite 380, Golden, Colorado 80401–2266, Margaret Learmouth, Contract Specialist, (303) 231–5750, Extension 138.

Issued in Chicago, Illinois, on August 5, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

Intent To Award a Noncompetitive Assistance Action; Solar Energy Industries Association

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Pursuant to 10 CFR 600.7(b)(2), the Department of Energy, through the Boston Office, intends to award a grant to the Solar Energy Industries Association (SEIA). The grant will provide initial funding in the amount of $50,000 for an assistance effort aimed at linking utilities with eight direct combustion electric biomass applications. The work will involve the National Wood Energy Association and will assist in securing the financing for the projects, and approaching the state utility regulators on behalf of the Department of Energy. The primary goal of this project is to assist in promoting economic development and energy independence at the local utility level utilizing biomass.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This project is suitable for noncompetitive financial assistance and would not be eligible for financial

assistance under a recent, current, or planned solicitation.

The initial term of this grant will be twelve (12) months from the date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Boston Office; Attn: Mr. Hugh Saussy, Jr.; One Congress Street, Boston, MA 02114–2021.

Issued in Chicago, Illinois, on August 5, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19708 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP93–161–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 10, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 30, 1993, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1993:

Fortieth Revised Sheet No. 26
Thirty-fourth Revised Sheet No. 26.1
Thirty-eighth Revised Sheet No. 26A
Thirty-fourth Revised Sheet No. 26A.1

Columbia states that the sales rates set forth on Fortieth Revised Sheet No. 26 and Thirty-fourth Revised Sheet No. 26.1 reflect a WACOG surcharge of 28¢ per Dth in the Commodity rate. Columbia files this surcharge pursuant to Article IV of Columbia's 1985 PGA settlement in Docket No. TA82–1–21–001, *et al.* (See *Columbia Gas Transmission Corp.*, 34 FERC ¶ 161,307 (1985).

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19604 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–3–53–000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

August 10, 1993.

Take notice that K N Energy, Inc. ("K N") on July 30, 1993 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1–B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	$0.1976	$0.1976
D1 Demand	(0.0007)	(0.0010)
D2 Demand	(0.0161)	(0.0147)
WPS Demand	(0.0014)	(0.0020)
IOR Commodity	0.1808	0.1819

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending November 30, 1993. The proposed effective date for the rate changes is September 1, 1993.

K N states that copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

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 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19608 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–620–000]

K N Energy, Inc.; Request Under Blanket Authorization

August 10, 1993.

Take notice that on August 6, 1992, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93–620–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps for delivery of gas to end users under K N's blanket certificate issued in Docket No. CP93–140–000 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.

K N requests authorization to construct and operate sales taps to various end users located along its jurisdictional pipelines. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

END USERS

Customer	Location of tap	Use of gas
Resident/Occupant 93–53, Thomas and Philip Trausch	SW/4 Sec. 25–T6N–R11W, Adams Co., Nebraska	Grain Dryer.
Resident/Occupant 93–54, Pioneer Hi-Bred International	W/4 Sec. 20–T11N–R2W, York Co., Nebraska	Commercial.
Resident/Occupant 93–55, Manford Nichols	SW/4 Sec. 28–T27S–R31W, Haskell Co., Kansas	Irrigation.
Resident/Occupant 93–56, Dinklage Feeders	SW/4 Sec. 3–T21N–R53W, Scotts Bluff Co., Nebraska	Commercial
Resident/Occupant 93–57, Tom Deets	SW/4 Sec. 3–TT11N–R16W, Buffalo Co., Nebraska	Grain Dryer.
Resident/Occupant 93–58, Cargill, Inc	NE/4 Sec. 29–T20N–R6W, Boone Co., Nebraska	Grain Dryer.

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.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 93–19602 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–15–25–000 and TM93–7–25–000]

Mississippi River Transmission Corp.; Rate Change Filing

August 10, 1993.

Take notice that on July 30, 1993 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Tariff sheet	Effective date
Ninety-First Revised Sheet No. 4.	Sept. 1, 1993.
Fiftieth Revised Sheet No. 4.1.	Sept. 1, 1993.
Fourteenth Revised Sheet No. 4A.2.	Sept. 1, 1993.
Fifteenth Revised Sheet No. 4A.2.	Dec. 1, 1993.

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and Paragraph 17.2 of MRT's FERC Gas Tariff, changes in fixed take-or-pay charges incurred from pipeline suppliers. MRT states that the impact of the instant filing on its Rate Schedule CD–1 rates is an increase of 5.9 cents per MMBtu in the demand charge and a decrease of 2.6 cents per MMBtu in the commodity charge from the rate levels established in MRT's last out-of-cycle PGA filed July 30, 1993 to be effective August 1, 1993. MRT states that the single part rate under Rate Schedule SGS–1 reflects a decrease of 2.03 cents per MMBtu.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19606 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket PP–82–2]

Application for Amendment of Presidential Permit by Joint Owners of the Highgate Project

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Vermont Electric Power Company, Inc. (VELCO), acting as an agent for the Joint Owners of the Highgate Project [1] (Joint Owners), has applied to the Department of Energy (DOE) to amend the Presidential permit contained in Docket No. PP–82 to allow an increase in the limit for power imports from 200 megawatts (MW) to 225 MW.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number PP–82–2 should appear clearly on the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202–586–5883 or Lise Howe (Program Attorney) 202–586–2900.

SUPPLEMENTARY INFORMATION: On August 2, 1993, VELCO, on behalf of the Joint Owners of the Highgate Project, filed an application with the DOE for authorization to operate the Highgate Project at import levels of up to 225 MW. The Highgate Project consists of a 7-mile long, 120,000-volt transmission line and a back-to-back converter terminal. In March 1989, the DOE issued an amendment to Presidential Permit PP–82 authorizing the operation of the Highgate converter terminal at power import levels of up to 225 MW for a period of six months ending in September 1989.

In support of its application VELCO has included studies demonstrating the reliability limit for imports received through the Highgate Interconnection Facilities. VELCO states that the Joint Owners have coordinated these studies with the Northeast Power Coordinating Council and with the Pennsylvania-New Jersey-Maryland Interconnection.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Office of Fossil Energy at the address provided above in accordance with 211 and 214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE no later than September 15, 1993. Additional copies of such petitions to intervene or protests also should be filed directly with John H. Marshall, Attorney, Downs Rachlin & Martin, 9 Prospect Street, St. Johnsbury, Vermont 05819–0099.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interests in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be

[1] The Joint Owners are eight Vermont electric utilities that jointly own facilities authorized by Presidential Permit PP–82. The Joint Owners include: Central Vermont Public Service Corp.; Franklin Electric Light Co., Inc.; Vermont Public Power Supply Authority; Green Mountain Power Corp.; Vermont Electric Generation and Transmission Cooperative, Inc.; Village of Johnson Electric Light Department; Rochester Electric Light and Power Co., Inc.; and the City of Burlington Electric Light Department.

directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed amendment will not adversely impact on the reliability of the U.S. electric power supply system.

Before a Presidential permit may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, State governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers, and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday.

Issued in Washington, DC, on August 10, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office Fossil Energy.

[FR Doc. 93–19706 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TQ93–14–25–000]

Mississippi River Transmission Corp.; Rate Change Filing

August 10, 1993.

Take notice that on July 30, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing Ninetieth Revised Sheet No. 4 and Forty-Ninth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective August 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that the Ninetieth Revised Sheet No. 4 and Forty-Ninth Revised Sheet No. 4.1 reflect an increase of 16.43 cents per MMBTu in the commodity cost of purchased gas from PGA rates contained in the out-of-cycle PGA filing to be effective July 1, 1993 in Docket No. TQ93–13–25–000. MRT also states that since the June 29, 1993 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in the filing under current Commission regulations.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19609 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–605–000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

August 10, 1993.

Take notice that on August 2, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–605–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to partially abandon facilities at the Yelm Meter Station in Thurston County, Washington, and to construct and operate replacement facilities in order to better accommodate Northwest's existing firm delivery obligations to Washington Natural Gas Corporation (Washington), under Northwest's blanket certificate issued in Docket No. CP82–433–000 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.

Northwest states that the existing maximum delivery capacity of its Yelm Meter Station is less than Northwest's existing firm delivery obligations to Washington at that point. As result Northwest proposes to replace the two 1-inch regulators with two new 1-inch regulators. Northwest also proposes to replace a 1-inch × 1.5-inch relief valve with a 2-inch × 3-inch relief valve.

Northwest states that the total cost of replacing the facilities is estimated to be approximately $30,630 and Northwest would not require any cost reimbursement from Washington.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19603 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–615–000]

Panhandle Eastern Pipe Line Co.; Application

August 10, 1993.

Take notice that on August 3, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–615–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain farm tap installations and the associated transportation service, all as more fully set forth in the application

which is on file with the Commission and open for public inspection.

Panhandle states that it seeks to abandon and transfer ownership to Peoples Natural Gas Company (Peoples), certain farm tap facilities, along Panhandle's State Line Lateral in Miami and Johnson Counties in Kansas. All facilities abandoned by Panhandle will remain in place for the continued use by Peoples.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19601 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–598–000]

Texas Eastern Transmission Corp.; Application

August 10, 1993.

Take notice that on July 30, 1993 Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed an application in Docket No. CP93–598–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Texas Eastern to: (1) Lease capacity on facilities of a third-party pipeline which would be used for open access transportation, (2) "roll-in" lease payment costs into its system rates, and (3) to abandon the leased capacity after termination of the lease, all as more fully set forth in the application on file and open to public inspection.

Specifically, Texas Eastern requests:

(1) Authorization pursuant to section 7(c) of the NGA to lease 250,000 MMBtu's of capacity in Arkla Energy Resources Company's (AER) existing Line AC and proposed Line ACE, extending from AER's Chandler Compressor Station in Latimer County, Oklahoma, to an interconnection of its proposed Line ACE near Shaw, Mississippi, with the pipeline system of Trunkline Gas Company (Trunkline) and 83,000 MMBtu of capacity in certain gathering facilities attached and/or to be attached to AER's transmission system (leased capacity), and to receive into and deliver from such facilities natural gas pursuant to the AER Capacity Lease, including deliverers into Trunkline's pipeline system near Shaw, Mississippi.

(2) Authorization to use the leased capacity to provide service to Texas Eastern's customers pursuant to Texas Eastern's open-access blanket certificate and FERC Gas Tariff, Sixth Revised Volume No. 1, as such tariff may be in effect from time to time.

(3) Authorization to: (i) Roll-in the costs of the AER Lease in Access Zone ETX and ELA and to charge initial rates for the recovery of the costs of the lease capacity consisting of a reservation surcharge of a maximum of $1.139 per dekatherm per month applicable to transportation from Texas Eastern's Access Zones ETX and ELA to the access area border under Texas Eastern's Rate Schedules FT–1 and CDS, plus applicable compressor fuel on AER, (ii) an interruptible rate of a maximum of $0.2685 and minimum of $0.01 per dekatherm of natural gas transported via the Leased Capacity under Rate Schedule IT–1 and PTI, plus applicable compressor fuel on AER, and (iii) maximum capacity reservation release charges for the release of leased capacity of $8.167 per dekatherm or $0.2685 per dekatherm if the release is on a volumetric basis.

(4) permission and approval pursuant to section 7(b) of the NGA to abandon the leased capacity upon expiration or termination of the Capacity Lease Agreement.

It is stated the leased capacity will provide Texas Eastern's customers with access to the substantial natural gas supplies of the Arkoma and the Anadarko Basins. All of such capacity will be available on a firm basis to all Rate Schedule FT–1 and CDS customers which have firm access right to Access Zones ETX and ELA. In addition, it is noted all Rate Schedule IT–1 and PTI customers shall have access to such capacity on an interruptible basis. It is indicated that the capacity leased from AER will be subject to Texas Eastern's Order No. 636 restructured FERC Gas Tariff.

It is stated the natural gas from the leased capacity will be made available to Texas Eastern's system at three different delivery points: 250,000 MMBtu's of natural gas per day can be delivered from the leased capacity at the primary delivery point on Line ACE at the interconnection with Trunkline's pipeline facilities near Shaw, Mississippi; 50,000 MMBtu's of natural gas per day can be delivered at a secondary delivery point at the proposed interconnection of Line ACE and the pipeline facilities of Texas Gas in Bolivar County, Mississippi; and 100,000 MMBtu's of natural gas per day can be delivered from the Leased Capacity at a secondary delivery point into Texas Eastern's pipeline system at the existing interconnection AER's and Texas Eastern's pipeline systems in Hot Springs County, Arkansas. Therefore, Texas Eastern states it will have the capability to utilize 400,000 MMBtu of primary and secondary delivery capacity to arrange for the flexible access by its shippers to the Arkoma and Anadarko Basins to effectuate the 250,000 MMBtu/D capacity lease agreement.

Texas Eastern explains that there will be four transportation paths on Texas Eastern's system for the transportation of the Arkoma and Anadarko natural gas supplies to markets of Texas Eastern's shippers. One flow path will be on Texas Eastern's 24-inch system from Hot Springs County, Arkansas, to Lebanon, Ohio. Another flow path will be Texas Gas' pipeline system from Bolivar County, Mississippi, to Lebanon, Ohio, and a third flow path will be on Trunkline's pipeline system from Shaw,

Mississippi, to Lebanon, Ohio. From Lebanon, Ohio, the natural gas will flow on Texas Eastern's 24-inch pipeline system to market or from Somerset, Ohio, on Texas Eastern's 30-inch pipeline system to market. The fourth path will be from Shaw, Mississippi, where the natural gas will be delivered by displacement to Texas Eastern's Monroe Lateral, will flow to Kosciusko, Mississippi, and then be transported to market via Texas Eastern's 30-inch pipeline system.

Texas Eastern requests authorization to implement a natural gas supply project benefitting all of its FT–1 and CDS customers having access rights to Access Zones. Texas Eastern states that its proposal will provide many benefits to those customers, making available to those customers the very prolific natural gas supplies of the Arkoma and Anadarko Basins at minimum economic and environmental costs. The lease, it is asserted, will provide Texas Eastern's customer substantial diversity of reliable, long-term gas supplies, and provide them with significant flexibility with respect to the management of their natural gas supply portfolios, capacity releases, transportation paths of the Arkoma and Anadarko natural gas supplies, and in mitigating, through capacity releases, the Rate Schedules FT–1 and CDS surcharge. It is noted that Texas Eastern's customers will have separate capacity release rights for their firm entitlements to the natural gas supplies in these basins and may trade these entitlements on a one-for-one basis with entitlements on other access area segments of Texas Eastern's system.

Texas Eastern states that its proposal is not an incremental project proposal but a proposal to assign all of the capacity of the AER Capacity Lease to its Rate Schedule CDS and FT–1 customers having firm access rights in Access Zone ETX and ELA.

Texas Eastern states that the annual lease payment is $24,500,000, payable quarterly in advance, and is a negotiated amount. Beginning with the sixth anniversary of the commencement of date of the AER Capacity Lease, the annual lease payment is subject to renegotiation if it is greater or less than $500,000 of AER's maximum rates then in effect for comparable service under AER's FERC Gas Tariff. There will be no facilities constructed by Texas Eastern.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19600 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA94–1–35–000]

West Texas Gas, Inc.; Filing

August 10, 1993.

Take notice that on July 30, 1993, West Texas Gas, Inc. (WTG) filed Eight Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective October 1, , 1993. Eighth Revised Sheet No. 4 and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 25, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19607 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM93–6–49–002]

Williston Basin Interstate Pipeline Co.; Compliance Filing

August 10, 1993.

Take notice that on July 28, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing an explanation of the working papers submitted in Docket Nos. TM93–6–49–000 and TM93–6–49–001 in compliance with ordering paragraph (B) of the Commission's July 16, 1993, "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, Rejecting Tariff Sheets and Granting Waiver."

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19605 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–70–NG]

Peoples Natural Gas Co., Division of UtiliCorp United Inc.; Order Amending Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it issued DOE/FE Order No. 707–A which amended a long-term natural gas import authorization previously granted to Peoples Natural Gas Company, Division of UtiliCorp United Inc. (Peoples). See DOE/FE Opinion and Order No. 707, 1 FE ¶ 70,664 (November 12, 1992). By this amendment, Peoples is authorized to import from Western Gas Marketing Limited a total of up to 9,000 Mcf of Canadian gas per day on a firm basis and up to 25,000 Mcf of gas per day on an interruptible basis through October 31, 1997.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 10, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–19707 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4692–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 15, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION: Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Automobile and Light Duty Truck Surface Coating Operations (Subpart MM)–Information Requirements (EPA ICR No. 1064.06; OMB No. 2060–0034). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of the following affected facilities in an automobile or light-duty truck assembly plant: each prime coat operation, each guide coat operation, and each topcoat operation must provide EPA, or the delegated State regulatory authority, with one-time notifications and the results of the initial performance test, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, subject facilities must identify, record and report quarterly each instance in which the volume-weighted average of the total mass of VOC's emitted to the atmosphere per volume of applied coating solids exceeds the limit specified. Depending upon how compliance is achieved the owner or operator must install and operate devices to measure and record certain operating characteristics: (1) Where compliance is achieved through the use of a capture system and control device, the owner or operator must report volume-weighted average passing through the control device; (2) where compliance is achieved through the use of thermal incineration the owner or operator must continuously record the incinerator combustion temperature and interpret these records; and (3) where compliance is achieved through the use of catalytic incineration the owner or operator must continuously record the gas temperature upstream and downstream of the incinerator catalyst bed and interpret these records.

The affected facilities must notify EPA or the State regulatory authority of the date upon which demonstration of their control and recording equipment commences.

The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 6.3 hours per response for reporting and 32 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of the following affected facilities in an automobile or light-duty truck assembly plant: each prime coat operation, each guide coat operation, and each topcoat operation.

Estimated No. of Respondents: 38.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 2,174 hours..

Frequency of Collection: One-time notifications and compliance reports for new facilities; quarterly reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 9, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19674 Filed 8–13–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4694–1]

Minnesota; Final Determination of Adequacy of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Minnesota's application.

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. The EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the 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 the 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 are an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. The EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal Criteria will apply to all permitted and unpermitted MSWLF facilities.

Minnesota applied for a determination of adequacy under section 4005 of RCRA. The EPA reviewed Minnesota's application and tentatively determined that Minnesota's permit program is adequate to ensure compliance with the revised Federal MSWLF Criteria. After consideration of all comments received, the EPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Minnesota shall be effective on August 16, 1993.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Attn: Mr. Andrew Tschampa, mailcode HRP-8J, telephone (312) 886-0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the EPA promulgated revised Federal MSWLF Criteria (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 facilities comply with the revised Federal Criteria. Subtitle D also requires in section 4005 that the 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.

The EPA intends to approve State/Tribal MSWLF permit programs prior to promulgation of STIR. The 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 MSWLF's that are technically comparable to the revised Federal Criteria. Second, 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. Third, the State/Tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Fourth, the 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 permit program.

The EPA regional offices will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. The EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF permit program before it grants full approval to a program.

B. State of Minnesota

On April 30, 1993, Minnesota submitted an application to obtain an adequacy determination for the State's municipal solid waste landfill permit program. On May 28, 1993, the EPA published a tentative determination of adequacy for all portions of Minnesota's program. Further background on the tentative determination of adequacy appears at 58 FR 31027, May 28, 1993.

Along with the tentative determination, the EPA announced the availability of the application for public comment and the date of a public hearing on the application. The public hearing was held at the Minnesota Pollution Control Agency office in St. Paul, Minnesota, on July 28, 1993.

The EPA has reviewed Minnesota's application and has determined that all portions of the State's municipal solid waste landfill permit program will ensure compliance with the revised Federal Criteria. In its application, Minnesota demonstrated that the State's permit program adequately meets the location restrictions, operating criteria, design criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal Criteria.

The revised Federal Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Minnesota allows samples to be filtered and preserved in the field. The EPA intends to revisit this issue. If the ban on field filtering is upheld, the State will be required to come into compliance with the provisions in 40 CFR 258.53(b). In the meantime, the State will not be given approval of this requirement.

In addition, Minnesota demonstrated that the State's MSWLF permit program has the authority to issue permits incorporating the requirements of the revised Federal Criteria to all MSWLFs in the State, with the exception of those located on Indian Lands. The EPA determined that Minnesota's permit program contains provisions for public participation, compliance monitoring, and enforcement.

Once a MSWLF permit application is considered complete by the State, a notice is published to solicit public comment and requests for a public hearing. All information submitted in the application is available for public review. All written and verbal comments received from the public are considered by the State before a final determination is made. The State will publish a public notice concerning the final issuance of a permit.

The Minnesota compliance monitoring program has the authority to obtain information from a MSWLF facility, as well as the authority to enter and inspect any MSWLF site or record pertaining to solid waste management, to determine compliance. Minnesota has mechanisms to verify the accuracy of information submitted by a MSWLF facility, to verify the sampling methods used by a MSWLF facility, and to produce evidence admissible in an enforcement proceeding. Minnesota has the authority to conduct monitoring or testing to ensure compliance. Minnesota inspects MSWLFs to verify and document compliance with solid waste regulations.

Minnesota has the following authorities to remedy violation of program requirements:

1. Authority to restrain a person from engaging in any activity that may endanger or cause damage to human health or the environment;

2. Authority to sue a person who is violating any statute, regulation, order, or permit that has been issued by the State; and

3. Authority to administratively assess penalties for violating any statute, regulation, order, or permit.

The EPA received the following public comments on its tentative determination of full program adequacy for Minnesota's MSWLF permit program.

One commenter expressed confidence that Minnesota will conduct its MSWLF permit program in an appropriate manner and supported the EPA's decision to grant full program approval to the State.

One commenter asserted that the legitimacy of the MSWLF permit program approvals is questionable because the STIR has not been promulgated. As explained above, section 4005(c)(1)(C) of RCRA requires the EPA to determine whether States have adequate MSWLF permit programs, but does not mandate the Agency to issue a rule for such determinations. The EPA has drafted the STIR to provide procedures to approve MSWLF permit programs. States and Tribes interested in applying for adequacy have used the draft STIR as guidance in preparation of their applications. In addition, the EPA regional offices have used the draft STIR to evaluate applications. However, the Agency believes that is has the necessary statutory authorities to approve MSWLF permit programs before the STIR ispromulgated, and believes that early approvals will be beneficial for compliance with the revised Federal Criteria.

One commenter asserted that Minnesota's application did not address the use of geosynthetic clay liners (GCL's). The commenter suggested that the Minnesota application be amended to allow the use of GCL's as an equivalent to compacted clay in a landfill liner or final cover design. Minnesota's application indicates that the State has composite liner and cap requirements that are consistent with 40 CFR part 258. In addition, the State indicated that it would like to retain the ability to consider alternative liner and cap designs. The alternative designs would be evaluated on groundwater protection standards and through the use of the U.S. EPA Multi-Method and HELP Models. As the application did not specify nor reject certain alternatives, it appears that GCL's could be evaluated as an alternative design. The use of an alternative liner or cap design that includes a GCL, would be a decision made by the State using the parameters included in the application.

C. Decision

After reviewing the public comments, I conclude that Minnesota's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Minnesota is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal Criteria independent of any State/Tribal enforcement program. As the EPA explained in the preamble to the revised Federal Criteria, the EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by the EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. The EPA believes it has good cause under section 553(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. The EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by the EPA as Federal law. Consequently, the EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice 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: August 6, 1993.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–19675 Filed 8–13–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59319A; FRL–4639–1]

Certain Chemicals; Approval of Modifications to a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME–93–10. The test marketing conditions are described below.

EFFECTIVE DATES: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Edna Pleasants, New Chemicals Branch, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202 260–3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modifications of the test marketing periods for TME–93–10. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME applications and modification requests, and for the modified time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the

number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T-93-10

Notice of Approval of Original Application: March 19, 1993. (58 FR 15145).

Modified Test Marketing Period: 365 days commencing on first day of nonexempt commerical manufacture. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 5, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-19673 Filed 8-13-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4693-7]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; Border Area Drums Site.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given that a proposed administrative cost recovery settlement under Section 122(h) of CERCLA, concerning the Border Area Drums Site ("the site") located at the Otay-Mesa Border Crossing, California, was entered into by EPA Region IX and Barmet Aluminum Corporation ("the settling party"). The materials that were the subject of the response action at the site were found in a pottery factory in Tijuana, Mexico. The proposed settlement requires the settling party to pay $45,000.00, which is a portion of EPA's response costs for the site to the Hazardous Substances Superfund. The response costs incurred by EPA for the site do not exceed $500,000. Therefore, EPA may settle this matter without the prior written approval of the Attorney General.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this settlement. The Agency's response to any comments received will be available for public inspection at EPA Region IX offices located at 75 Hawthorne Street, San Francisco, California, 94105.

DATES: Comments must be submitted on or before September 15, 1993.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at EPA Region IX offices located at 75 Hawthorne Street, San Francisco, California, 94105. A copy of the proposed settlement may be obtained at the same address from Steven Calanog, Removal Enforcement Section (H-8-4), telephone (415) 744-2296. Comments on the proposed settlement should reference the Border Area Drums Site located at the Otay-Mesa Border Crossing, California, and EPA Docket No. 09-93-14 and should be addressed to Roger Klein, Office of Regional Counsel (RC-3-2), at 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Steven Calanog at (415) 744-2296 or Roger Klein at (415) 744-1311.

Dated: August 5, 1993.

Keith Takata,

Acting Director, Hazardous Waste Management Division, EPA Region IX.

[FR Doc. 93-19676 Filed 8-13-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632-6934.

OMB Control No.: 3060-0536

Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery

Expiration Date: 02/28/96

Description: In the Third Report and Order in the matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990 (ADA) (CC Docket No. 90-571, FCC 93-357, adopted July 15, 1993, and released July 20, 1993), the Commission adopted rules implementing the TRS Fund, a shared-funding mechanism to recover interstate TRS Costs. The TRS Fund will be administered for two years, on an interim basis, by the National Exchange Carriers Associations, Inc. (NECA). All carriers providing interstate telecommunications services must contribute to the TRS Fund on the basis of their relative share of gross interstate revenues. Contributors' contribution to the TRS fund will be the product of their subject revenues from the prior calendar year and a contribution factor determined annually by the Commission. Contributions must be calculated and filed in accordance with FCC 431, TRS Fund Worksheet. (A public notice will be issued announcing the availability of FCC 431, TRS Fund Worksheet.) Initial contributions to the TRS Fund are due September 26, 1993. TRS providers are also required to provide NECA with true and adequate data necessary to determine TRS fund revenue requirements and payments and are required to submit reports of interstate TRS minutes of use in order to receive payments. Eligible TRS providers must notify the administrator of their intent to participate in the TRS Fund 30 days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year. The information will be used to administer the program.

OMB Control No.: 3060-0457

Title: Amendment of Part 22 of the Commission's Rules to Establish Standards for Conducting Comparative Renewal Proceedings—CC Docket No. 90-358

Expiration Date: 03/31/96

Description: In the Report and Order in the matter of Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Cellular Radio Telecommunications Service (CC Docket No. 90-358, adopted December 12, 1991; and released January 9, 1992), the Commission established standards for conducting cellular radio comparative renewal proceedings. The Commission created

standards for awarding a renewal expectancy; basic qualifications standards for challengers; procedures for preventing possible abuses in the comparative renewal process; and filing and hearing procedures designed to expedite comparative cellular renewal proceedings. A Memorandum Opinion and Order on Reconsideration (Order) was issued in this proceeding by the Commission, adopted March 11, 1993 and released April 9, 1993, which modified certain rules and standards established for conducting comparative renewal proceedings. The Order adopted a two-step procedure for cellular license renewal hearings and also modified the renewal expectany standards. Applicants filing applications which would compete with renewal applications are required to submit certain information, in addition to demonstration of financial qualification and of the availability of proposed ternsmitter-antenna sites. Cellular renewal licensees seeking a renewal expectancy are required to make showings also.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–19565 Filed 8–13–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–149; DA 93–866]

Private Land Mobile Radio Service; Idaho Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Idaho (Region 12). As a result of accepting the Plan for Region 12, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Idaho Public Safety Plan.

Adopted: August 3, 1993.

Released: August 9, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 28, 1993, Region 12 (Idaho) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Idaho. On April 20, 1993, Idaho filed revisions to the Plan, based on conversations with the Commission's staff.

2. The Idaho Plan was placed on Public Notice for comments due on July 7, 1993, 58 FR 32133 (June 8, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Idaho and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Idaho.

4. Therefore, we accept the Idaho Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz ban in Idaho may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–19564 Filed 8–13–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–150; DA 93–867]

Private Land Mobile Radio Services; North Carolina Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for North Carolina (Region 31). As a result of accepting the Plan for Region 31, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of North Carolina Public Safety Plan.

Adopted: August 3, 1993.

Released: August 9, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On May 13, 1992, Region 31 (North Carolina) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in North Carolina. On April 16, 1993, North Carolina filed revisions to the Plan, based on conversations with the Commission's staff.

2. The North Carolina Plan was placed on Public Notice for comments due on July 7, 1993, 58 FR 32134 (June 8, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for North Carolina and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in North Carolina.

4. Therefore, we accept the North Carolina Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in North Carolina may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–19563 Filed 8–13–93; 8:45 am]

BILLING CODE 6712–01–M

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: August 10, 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 Benton, Clayton, Harrison, Montgomery, Jackson, Fayette, Cherokee, Dubuque 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. 93–19699 Filed 8–13–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 22, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from flooding and severe storms on June 28, 1993, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint John McKay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Wyandotte, Leavenworth, Harvey, Douglas, and Johnson Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–19697 Filed 8–13–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–998–DR]

Nebraska; 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 Nebraska, (FEMA–998–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: August 9, 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 Nebraska dated July 19, 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 19, 1993:

Greeley and Nace Counties 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. 93–19700 Filed 8–13–93; 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: August 10, 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 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 2, 1993:

Monroe 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. 93–19698 Filed 8–13–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 93–64]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain

number of members for review each quarter, so that all members will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the seventh quarter review under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date For Member Community Support Statements for Members Selected in Seventh Quarter Review:* September 30, 1993.

Due Date For Public Comments on Members Selected in Seventh Quarter Review: September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2825, or Kathleen S. Brueger, Associate Director, Housing Finance Directorate, (202) 408–2821, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board intends to review the entire FHLBank System membership once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. Only members with post-July 1, 1990 CRA Evaluations and members not subject to CRA will be selected for review in the first two years following the effective date of the regulation. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members to be Reviewed in Seventh Quarter, Grouped by FHLBank District

Member	City and state
Federal Home Loan Bank of Boston—District 1 Post Office Box 9106, Boston, Massachusetts 02205–9106	
Mechanics Savings Bank	Hartford, CT.
American Savings Bank	New Britain, CT.
Bridgewater Savings Bank	Bridgewater, MA.
Lexington Savings Bank	Lexington, MA.
South Weymouth Savings Bank	Weymouth, MA.
Weymouth Co-operative Bank	Weymouth, MA.
Peoples Savings Bank	Worcester, MA.
Norway Savings Bank	Norway, ME.
Woodsville Guaranty Savings Bank	Woodsville, NH.
Federal Home Loan Bank of New York—District 2 One World Trade Center, 103rd Floor, New York, New York 10048	
Family First Federal Savings Bank	Clifton, NJ.
First Savings Bank of Little Falls, SLA	Little Falls, NJ.
Manville Savings Bank, SLA	Manville, NJ.
Millville Savings & Loan Association	Millville, NJ.
Sterling Bank	Mount Laurel Township, NJ.
Cenlar Federal Savings Bank	Princeton, NJ.
Pulawski Savings Bank	South River, NJ.
Summit Federal Savings & Loan Association	Summit, NJ.
Landis Savings Bank, SLA	Vinelind, NJ.
Wayne Savings Bank, SLA	Wayne, NJ.
Llewellyn-Edison Savings Bank, SLA	West Orange, NJ.
Seneca Federal Savings & Loan Association	Baldwinsville, NY.
Carthage Federal Savings & Loan Association	Carthage, NY.
Fidelity New York, FSB	Floral Park, NY.
First National Bank of Glen Falls	Glen Falls, NY.
Gouverneur Savings & Loan Association	Gouverneur, NY.
Sound Federal Savings & Loan Association	Mamaroneck, NY.
Community Mutual Savings Bank	Mount Vernon, NY.
Poughkeepsie Savings Bank, FSB	Poughkeepsie, NY.
Skaneateles Savings Bank	Skaneateles, NY.
Homestead Savings, FA	Utica, NY.
United Northern Federal Savings Bank	Watertown, NY.
Fajardo Federal Savings Bank	Fajardo, PR.
R & G Federal Savings Bank	Guaynabo, PR.
First Federal Savings Bank	Santurce, PR.
First Virgin Islands Federal Savings Bank	St. Thomas, VI.
Federal Home Loan Bank of Pittsburgh—District 3 625 West Ridge Pike, Suite B–107, Conshohocken, Pennsylvania 19428	
Delaware Savings Bank, FSA	Wilmington, DE.
Fidelity S&LA of Bucks County	Bristol, PA.
Citizens Savings Association	Clarks Summit, PA.
Valley Federal Savings & Loan Association	Easton, PA.

Member	City and state
Marquette Savings Bank	Erie, PA.
First Federal Savings Bank of Hanover	Hanover, PA.
First FS&LA of Harrisburg	Harrisburg, PA.
Deposit Bank	Indiana, PA.
S&T Bank	Indiana, PA.
Fulton Bank	Lancaster, PA.
Elmwood Federal Savings Bank	Media, PA.
Savings & Loan Association of Milton	Milton, PA.
People's Bank of Oxford	Oxford, PA.
Berean Federal Savings Bank	Philadelphia, PA.
St. Edmond's Savings & Loan Association	Philadelphia, PA.
Dwelling House Savings & Loan Association	Pittsburgh, PA.
Fidelity Savings Bank	Pittsburgh, PA.
First Pennsylvania Savings Association	Pittsburgh, PA.
Stanton Federal Savings & Loan Association	Pittsburgh, PA.
Progress Federal Savings Bank	Plymouth Meeting, PA.
American Savings Bank	Tamaqua, PA.
First Federal Savings Bank	Bluefield, WV.
Point Pleasant Federal Savings Bank	Point Pleasant, WV.
Fed One Savings Bank, FSB	Wheeling, WV.

Federal Home Loan Bank of Atlanta—District 4
Post Office Box 105565, Atlanta, Georgia 30348

SouthTrust Bank	Auburn, AL.
Cullman Savings and Loan Association	Cullman, AL.
Dothan Federal Saving Bank	Dothan, AL.
First FS &LA	Florence, AL.
Bank Independent	Sheffield, AL.
Security Federal Bank, a FSB	Tuscaloosa, AL.
Bank Boynton, a SSB	Boynton Beach, FL.
First FS&LA of the Glades	Clewiston, FL.
Popular Bank of Florida	Coral Gables, FL.
Gibraltar Savings and Loan Association	Hialeah, FL.
First FSB of Citrus County	Inverness, FL.
Floridabank, a FSB	Jacksonville, FL.
Community Savings, FA	North Palm Beach, FL.
J.P. Morgan Florida, FSB	Palm Way, FL.
Sunshine State FS & LA	Plant City, FL.
Partners Savings Bank	Tampa, FL.
Fidelity Federal Savings Bank	Dalton, GA.
First Federal Savings Bank of Georgia	Donaldsonville, GA.
Clayton County Federal Savings and Loan Association	Jonesboro, GA.
Bank of Perry	Perry, GA.
The Savannah Bank	Savannah, GA.
Fairfax Savings Bank, FSB	Baltimore, MD.
The Columbia Bank	Columbia, MD.
Regal Savings Bank	Owings Mill, MD.
State Bank	Fayetteville, NC.
Morganton Federal Savings and Loan Association	Morganton, NC.
Home Savings & Loan Association	Siler City, NC.
Security Savings and Loan Association	Southport, NC.
Jackson Savings Bank, SSB	Sylva, NC.
First Investors Savings Bank, Inc.	Whiteville, NC.
Peoples Federal Savings Bank	Wilmington, NC.
Lowcountry Savings Bank, Inc.	Mount Pleasant, SC.
Newberry Federal Savings Bank	Newberry, SC.
Union Federal Savings Bank	Union, SC.
George Washington National Bank	Alexandria, VA.
Ameribanc Savings Bank, FSB	Annandale, VA.
Metropolitan Bank for Savings, FSB	Arlington, VA.
Guaranty Savings and Loan, F.A	Charlottesville, VA.
Greater Atlantic Savings Bank, FSB	Herndon, VA.

Federal Home Loan Bank of Cincinnati—District 5
Post Office Box 598, Cincinnati, Ohio 45201

First Federal Savings Bank	Campbellsville, KY.
National Bank of Corinth	Corinth, KY.
First Federal Savings Bank of Elizabethtown	Elizabethtown, KY.
Farmers Deposit Bank	Eminence, KY.
Vine Street Trust Company	Lexington, KY.
First National Bank of Louisa	Louisa, KY.
Peoples Bank of Murray	Murray, KY.

Member	City and state
United Commonwealth Bank, FSB	Murray, KY.
West Point National Bank	Radcliff, KY.
Sebree Deposit Bank	Sebree, KY.
North Akron Savings Association	Akron, OH.
Caldwell Savings and Loan Company	Caldwell, OH.
Foundation Savings Bank	Cincinnati, OH.
Pioneer Savings Bank	Cleveland, OH.
Home Federal Savings and Loan Association	Niles, OH.
The Citizens Banking Company	Salineville, OH.
Springfield FS&LA	Springfield, OH.
Mid American National Bank & Trust Company	Toledo, OH.
Peoples Savings Bank of Troy	Troy, OH.
Brownsville Bank	Brownsville, TN.
The First State Bank of Brownsville	Brownsville, TN.
First Federal Savings Bank	Clarksville, TN.
Cordova Bank and Trust Company	Cordova, TN.
Union Savings Bank	Covington, TN.
Security Bank	Dyersburg, TN.
Bank of Friendship	Friendship, TN.
Greeneville Federal Bank, FSB	Greeneville, TN.
Republic Federal Savings & Loan Association	Loudon, TN.
City Bank & Trust Company	McMinnville, TN.
Security Federal Savings & Loan Association	McMinnville, TN.
Munford Union Bank	Munford, TN.
Oakland Deposit Bank	Oakland, TN.
Bank of Commerce	Trenton, TN

Federal Home Loan Bank of Indianapolis—District 6
P.O. Box 60, Indianapolis, IN 46205–0060

Star Financial Bank, Indianapolis	Anderson, IN.
First Community Bank and Trust	Bargersville, IN.
Hendricks County Bank & Trust Company	Brownsburg, IN.
Old National Bank of Evansville	Evansville, IN.
Permanent Federal Savings Bank	Evansville, IN.
The Garrett State Bank	Garrett, IN.
First National Bank of Kokomo	Kokomo, IN.
La Porte Bank & Trust Company	La Porte, IN.
Lafayette Bank & Trust Company	Lafayette, IN.
The Farmers & Merchants State Bank	Logansport, IN.
Star Financial Bank	Marion, IN.
North Salem State Bank	North Salem, IN.
Ripley County Bank	Osgood, IN.
State Bank of Oxford	Oxford, IN.
First Federal Savings Bank	Rochester, IN.
Central National Bank of Howard County	Russiaville, IN.
First Source Bank	South Bend, IN.
Valley American Bank and Trust Company	South Bend, IN.
Sullivan-Peoples State Bank	Sullivan, IN.
Citizens National Bank of Tell City	Tell City, IN.
The American National Bank of Vincennes	Vincennes, IN.
Centier Bank	Whiting, IN.
Bank of Lenawee	Adrian, IN.
Inter-City Bank	Benton Harbor, MI.
Blissfield State Bank	Blissfield, MI.
First Community Bank	Harbor Springs, MI.
Independent Bank	Ionia, MI.
G. W. Jones Exchange Bank	Marcellus, MI.
Independent Bank-West Michigan	Rockford, MI.
Citizens Trust & Savings Bank	South Haven, MI.
Sparta State Bank	Sparta, MI.
United Bank and Trust	Tecumseh, MI.

Federal Home Loan Bank of Chicago—District 7
111 East Wacker Drive, Suite 800, Chicago, Illinois 60601

Wedge Bank	Alton, IL.
First FS&LA of Bloomington	Bloomington, IL.
Farmers State Bank of Buffalo	Buffalo, IL.
Chester Savings Bank, FSB	Chester, IL.
Chicago Building Loan and Homestead Association	Chicago, IL.
LaSalle Talman Bank, F.S.B	Chicago, IL.
Sterling Savings Bank	Chicago, IL.
TCF Bank of Illinois	Chicago, IL.

Member	City and state
Flora Savings Bank	Flora, IL.
Advance Savings Bank	Lansing, IL.
Litchfield Community Savings & Loan Association	Litchfield, IL.
First FS&LA of Mattoon	Mattoon, IL.
Morris Federal Savings & Loan Association	Morris, IL.
Hemlock Federal Bank for Savings	Oak Forest, IL.
Community Bank & Trust, S.B	Olney, IL.
Corn Belt Bank and Trust Company	Pittsfield, IL.
Iroquois Federal Savings and Loan Association	Watseka, IL.
Rock Savings Bank, SA	Beloit, WI.
Prime Federal Bank, FSB	De Pere, WI.
Mitchell Savings Bank, SA	Greenfield, WI.
McFarland State Bank	McFarland, WI.
TCF Bank of Wisconsin	Milwaukee, WI.

Federal Home Loan Bank of Des Moines—District 8
907 Walnut Street, Des Moines, Iowa 50309

Exchange State Bank	Collins, IA.
Hawkeye Bank of Humboldt County	Humboldt, IA.
Luana Savings Bank	Luana, IA.
First Federal Banking and Savings, FA	Bemidji, MN.
Inter Savings Bank, FSB	Minneapolis, MN.
Redwood Falls FS&LA	Redwood Falls, MN.
Mid-Central Federal Savings Bank	Wadena, MN.
Community First National Bank of Windom	Windom, MN.
The Cameron Savings and Loan Association	Cameron, MO.
Bank of Chesterfield	Chesterfield, MO.
Community Bank of Excelsior Springs, a SB	Excelsior Springs, MO.
Capital Savings and Loan Association	Jefferson City, MO.
City National Savings and Loan Association	Jefferson City, MO.
Home Savings and Loan Association of the City of Jefferson	Jefferson City, MO.
Bank of Lee's Summit	Lee's Summit, MO.
The Lexington Building and Loan Association	Lexington, MO.
St. Clair County State Bank	Osceola, MO.
Great Southern Savings Bank	Springfield, MO.
Systematic Savings and Loan Association	Springfield, MO.
St. Charles Federal Savings & Loan Association	St. Charles, MO.
Equality Savings and Loan Association	St. Louis, MO.
Heartland Savings Bank, FSB	St. Louis, MO.
Home Federal Savings Bank of Missouri	St. Louis, MO.
United Postal Savings Association	St. Louis, MO.
Heritage Federal Savings Bank	Cando, ND.
Gate City Federal Savings Bank	Fargo, ND.
Northwestern Savings Bank, FSB	Fargo, ND.

Federal Home Loan Bank of Dallas—District 9
5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038

Security Savings Bank, FSB	Conway, AR.
Bank of Elkins	Elkins, AR.
First Federal Savings & Loan Association	Harrison, AR.
Bank of Hot Springs	Hot Springs, AR.
First Bank of Arkansas	Russellville, AR.
Caldwell Bank and Trust Company	Columbia, LA.
Tri-Parish Bank	Eunice, LA.
United Bank and Trust Company	New Orleans, LA.
First Federal Savings and Loan Association	Opelousas, LA.
Springhill Bank & Trust Company	Springhill, LA.
The Federal Savings Bank of Evangeline Parish	Ville Platte, LA.
Citizens Bank & Trust Company	Belzoni, MS.
Merchants and Farmers Bank	Kosciusko, MS.
Laurel Federal Savings and Loan Association	Laurel, MS.
Western Commerce Bank	Carlsbad, NM
First Savings Bank, FSB	Clovis, NM
Citizens Bank	Farmington, NM
First Federal Savings & Loan Association	Bryan, TX.
First National Bank in Canyon	Canyon, TX.
Shelby-Panola Savings Association	Carthage, TX.
First National Bank	Dalhart, TX.
Graham Savings and Loan Association, FA	Graham, TX.
Bank United of Texas, FSB	Houston, TX.
Jacksonville Savings & Loan Association	Jacksonville, TX.
Keller State Bank	Keller, TX.

Member	City and state
First National Bank of Plainview	Plainview, TX.
USAA Federal Savings Bank	San Antonio, TX.
Snyder Savings and Loan Association	Snyder, TX.
The FNB of Central Texas	Waco, TX.

Federal Home Loan Bank of Topeka—District 10
Post Office Box 176, Topeka, Kansas 66601

Colorado Springs Savings & Loan Association	Colorado Springs CO
Mancos Valley Bank	Mancos, CO.
Equitable Savings and Loan Association	Sterling, CO.
Community First National Bank	Thornton, CO.
The State Bank of Wiley	Wiley, CO.
American Bank of Baxter Springs	Baxter Springs, KS.
Investors Federal Savings	Kinsley, KS.
Lyons Federal Savings Association	Lyons, KS.
Stromsburg Bank	Stromsburg, NE.
First Federal Savings Bank of Oklahoma	Claremore, OK.
Charter National Bank	Oklahoma City, OK.
Home Federal Savings and Loan Association	Oklahoma City, OK.

Federal Home Loan Bank of San Francisco—District 11
307 East Chapman Avenue, Orange, California 92666

State Savings Bank, FSB	Tucson, AZ.
Humboldt Bank	Eureka, CA.
High Desert National Bank	Hesperia, CA.
Golden State Bank, FSB	Irvine, CA.
Cathay Bank	Los Angeles, CA.
Topa Savings Bank, FSB	Los Angeles, CA.
First Federal Savings and Loan Association	San Bernardino, CA.

Federal Home Loan Bank of Seattle—District 12
1501 4th Avenue, Seattle, Washington, 98101–1693

Bank of America, FSB	Honolulu, HI.
City Bank	Honolulu, HI.
First Hawaiian Creditcorp, Inc.	Honolulu, HI.
BankWest, N.A.	Kalispell, MT
Clackamas County Bank	Sandy, OR.
Liberty Financial Corporation	Salt Lake City, UT
State Bank of Concrete	Concrete, WA
Whatcom State Bank	Ferndale, WA.

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBank no later than September 30, 1993.

All public comments concerning the Community Support performance of selected members must be submitted to the member's FHLBank no later than September 30, 1993.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FLHBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

Dated: August 10, 1993.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93–19556 Filed 8–13–93; 8:45 am]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this

notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010746–007.

Title: Columbus/Blue Star (North America) Space Charter & Sailing Agreement.

Parties: Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck, Blue Star (North America) Limited.

Synopsis: The proposed amendment extends the Agreement through March 1, 1996, increases the notice of withdrawal period from 90 to 180 days, and limits the period in which a party may withdraw from the Agreement.

By Order of the Federal Maritime Commission.

Dated: August 11, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–19648 Filed 8–13–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Suntrans International, Inc., 1120 Tower Lane, Bensenville, IL 60106. Officers: Heang J. Ahn, President/Director/Stockholder; Young M. Hong, Secretary/Director/Stockholder

Isaca Cargo International, Inc., 3250 NW. 77 Ct., S–200–A, Miami, FL 33122. Officers: Andres Gonzalez S., President/Director; Bernardo Diaz, Secretary/Treasurer

Rush Cargo Service, Inc., 9220 Fountainblue Blvd., #210, Miami, FL 33172. Officers: William R. Tobon, President/Director/Stockholder; Luis E. Cristancho, Director/Stockholder; Juan Antonio Trevino, Stockholder

Bringer Corporation, 3351 NW. 21st Street, Miami, FL 33122. Officers: Eduardo De Castro Filho, President; Zuny Tarrio, Vice President

"J.I.F." Jet International Forwarding, Inc., 4420 NW. 74th Avenue, Miami, FL 33166, Officers: Fancisco D. Ferrey, Chairman; Christina Santana, Vice President; Jose Santana, President

Global Maritime, Inc., 421 S. 9th Street, Ste. 117, Lincoln, NE 68508. Officer: Wahib Wahba, President

Dated: August 10, 1993.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–19568 Filed 8–13–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC 339]

National Institute for Occupational Safety and Health; Announcement of Cooperative Agreement to the Colorado Department of Health

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement with the Colorado Department of Health (CDH) to conduct an epidemiologic evaluation of cancer and occupational exposure to ionizing radiation and other toxic agents at the Rocky Flats nuclear weapons plant. Approximately $500,000 will be available in FY 1993 to support this project. It is expected that the award will begin on or about September 1, 1993, and will be awarded for a 12-month budget period within a project period of up to 5 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.

The purpose of this cooperative agreement is to support an epidemiologic study to be conducted in cooperation with investigators at the National Institute for Occupational Safety and Health (NIOSH). This study will be designed to investigate the possible relationships involving all cancers and individual cancer types versus occupational exposure to both internal and external ionizing radiation as well as exposure to other toxic agents found at the plant. Because of the existence of a cancer registry in Colorado, an incidence study addressing these issues is desired by NIOSH if such a study is feasible. However, if an incidence study is only capable of addressing a subcohort of the total cohort employed at Rocky Flats, a mortality study will be conducted either in addition to or in place of the incidence study. The decision to do both an incidence and a mortality study will depend upon the extent of coverage of the workforce by the incidence study.

The CDC will assist in developing the study protocol and assessing the information on morbidity rates for the study area, provide epidemiologic and other technical assistance in both planning and implementation phases, and provide consultation and assistance in monitoring the collection and handling of information and the sampling and testing activities. CDC will also participate in the statistical and epidemiologic analysis, assist in interpreting the study findings, and assemble the peer review committee to review project protocol.

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 CDH for conducting this study. No other applications are solicited. The Program Announcement and application kit have been sent to the CDH.

The CDH is the most appropriate organization to conduct the work under this cooperative agreement because:

1. CDH has already begun to collect, verify and edit dosimetry data necessary for the conduct of this study under previous funding from the Department of Energy.

2. CDH has already assembled a consortium of the best qualified epidemiologists, health physicists and administrators from various institutions to conduct this study. These experts not only represent a high degree of experience in epidemiology and health physics, but they represent the principal participants in past research of the Rocky Flats work force.

3. The close proximity of the CDH to the Rocky Flats plant will allow the CDH to make efficient use of Government funds. Travel costs and office space needed to accomplish the daily tasks associated with the study will be provided at little or no additional cost to the government.

4. The Colorado Cancer Registry is operated out of the CDH which will facilitate the conduct of a cancer incidence study at Rocky Flats.

5. The CDH has a long history of assistance in epidemiologic research from the Health Sciences Center at the University of Colorado. Researchers at the University are already involved in collaboration with CDH on many of the Rocky Flats dosimetry issues.

6. The CDH has the legal responsibility for disease control under the laws of the state.

Executive Order 12372 Review

The application is 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 System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number (CFDA) for this project is 93.283.

Other Requirements

A. 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.

B. Human Subjects

This project involves research on human subjects; therefore, applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided that demonstrates the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this program please refer to Announcement Number 339 and contact Oppie M. 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) 842–6630.

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 **SUMMARY** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 9, 1993.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC)

[FR Doc. 93–19614 Filed 8–13–93; 8:45 am]

BILLING CODE 4160–19–P

[Program Announcement Number 349]

National Institute for Occupational Safety and Health; Cooperative Agreement Program for Demonstration Cancer Control Project for Farm Populations

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements to conduct demonstration projects on effective cancer control for farm populations.

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 Section 301(a), [42 U.S.C. 241(a)], as amended.

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 these cooperative agreements.

Availability of Funds

Approximately $900,000 is available in FY 1993 to fund two to three awards. It is expected that the average award will be approximately $300,000, ranging from $200,000 to $450,000. 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 three 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 demonstrate the effectiveness of a strategy to reduce cancer morbidity and mortality among farm populations. Epidemiologic data have suggested that some groups of farmers may have increased risk of certain cancers such as lymphoma, leukemia, lymphatic, hematopoietic, skin, lip, brain, prostate, and stomach. The demonstration projects funded will provide a strategy for aspects of prevention, screening and early detection, and timely treatment and followup for cancer patients. The primary focus should be on primary prevention efforts, such as disseminating cancer risk information to farm populations, providing information on reducing or eliminating cancer risks and on the need to know and act on early signs and symptoms of cancer, etc. However, development and implementation of secondary interventions such as cancer screening, with proven effectiveness for early detection, and, therefore, treatment are encouraged.

The rationale for these demonstration projects is the belief that morbidity and mortality from cancer can be reduced by making more effective use of cancer-related information on prevention, detection, and treatment (especially by groups at high risk of either developing cancer or not surviving it). This broad view of cancer control is the thrust of the effort developed over the last 11 years by the National Cancer Institute (NCI).

To ensure optimal reductions in cancer morbidity and mortality among farm populations, it is necessary to evaluate the unique barriers to cancer control encountered by farmers. The cancer control programs conducted within the demonstrations projects should address these barriers.

The proposed demonstration projects *do not* need to focus on *all* of the goals of cancer control; however, innovative cancer control activities should in general, promote cancer control among farm populations and, more specifically:

1. Amplify preventive behaviors and avoidance of risk factors;
2. Increase awareness about cancer control measures such as knowledge of signs and symptoms pertaining to cancer;
3. Promote adherence by asymptomatic individuals to cancer prevention and early detection programs; and
4. Promote cancer control awareness among rural health care practitioners.

Farming is both an occupation and a lifestyle; therefore, the scope of the proposed demonstration projects *need not* be limited to those cancers that are considered to have occupational etiologies *(hereafter referred to as occupational cancers).*

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under *A.*, below and CDC/NIOSH shall be responsible for conducting activities under *B.*, below:

A. Recipient Activities

The recipient will be expected to design and to implement a demonstration project with the following components:

1. Develop an innovative cancer prevention and control program which consists of a coordinated set of activities designed to reduce or overcome barriers which farmers face in obtaining the full range of cancer control services. The program should be designed to ultimately lead to reducing cancer morbidity/mortality in a farm population. The cancer prevention and control activities should pertain to at least one occupational and one non-occupational cancer which are amenable to intervention, including primary prevention. Ideas for activities may include, but are not limited to, the following (please use these ideas as a guide only):
   a. Disseminating cancer risk information to farmers, farm wives and family, migrant farm workers, and other hired farm hands;
   b. Providing information on reducing or eliminating hazardous exposures;
   c. Implementing educational and behavioral programs about the need to know and act on early signs and symptoms of cancer;
   d. Promoting the appropriate use of cancer screening for early detection;
   e. Ensuring comprehensive and effective treatment and rehabilitation.
2. Developing a cancer prevention and control program which includes migrant farm workers as a targeted farm population is encouraged, but not required. Demonstration projects which address efforts to increase migrant farmers' practice of preventive behaviors, access to risk information, access and utilization of cancer screening and early detection, and effective follow-up, should consider involving hospital and clinic services and other community health resources at both ends of the migrant stream; and
3. Develop a cancer prevention and control program which innovatively utilizes effective health communication strategies, including mass media, to emphasize primary cancer intervention strategies (i.e., dissemination of risk information and encouraging maintenance of preventive behaviors) is encouraged. Such a program should target involvement of community-wide resources and should develop materials which reflect ways to communicate cancer-related information to culturally diverse farm populations, as needed.

B. CDC/NIOSH Activities

1. Provide technical information and support concerning occupational cancers and their risk factors;
2. Provide industrial hygiene guidance in the assessment of farm environments;
3. Provide assistance in the development of epidemiologic studies;
4. Provide consultation on any aspects of biological monitoring including selection of endpoints and methods of assay of carcinogens and premalignant changes;
5. Assist in the analysis, interpretation and dissemination of the study data;
6. Serve as a liaison with other NIOSH-funded cancer control projects. (Since NIOSH is funding a number of different cancer control projects, there will be additional benefit to all recipients if there is an interchange of information gained from investigation of barriers and from different approaches used in the demonstration projects.); and
7. The NCI will provide technical support concerning occupational cancers and their risk factors. NCI will also provide consultation in the areas mentioned in items 3 through 6 of this section.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Extent to which the proposed demonstration project will meet the goal of developing, implementing, and evaluating the effectiveness of interventions designed to reduce cancer morbidity/mortality among farm populations. (20%)
2. Scientific merit of the approach, design, and methodology which will be utilized to conduct the cancer control interventions, and the public health significance of the project. (15%)
3. Extent to which the applicant understands the objectives of the project, the steps to be taken in planning and implementing this project, and the responsibilities of the applicant for carrying out those steps. (10%)
4. Applicant's ability to provide the staff, knowledge, financial and other resources required to perform the responsibilities in this project, and to describe the approach to be used in carrying out those responsibilities. (10%)
5. Feasibility of obtaining participation of subjects and of obtaining existing appropriate data. (10%)
6. Extent to which the proposed schedule clearly defines the timeframe and the feasibility for accomplishing each of the activities to be carried out in the project, and the extent to which a clearly defined method for evaluating the process, content, impact, and effectiveness of the project is proposed. (10%)
7. Qualifications, expertise, experience and supporting bibliographies of proposed program staff, and time allocated for them to accomplish program activities; the support staff available for the performance of this project; the facilities, space and equipment available for performance of this project; and the capability of the applicant's administrative structure to foster the development of the project. (15%)
8. Proposed plan for administering this project and the name, qualifications, and time allocations of the project director who will be responsible for its administration. (10%)
9. Estimated cost of the project to the Government as reasonable, clearly justified, and consistent with the intended use of 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)

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 subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 93.956.

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 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 13, 1993.

1. *Deadline:*

Applications shall be considered as meeting 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. Private metered postmarks shall not be acceptable 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 349. 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 Ms. 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, Mailstop E–13, Atlanta, Georgia 30305, or by calling (404) 842–6546. Programmatic technical assistance may be obtained from Paul A. Schulte, Ph.D., Chief, Screening and Notification Section, NIOSH, Robert A. Taft Laboratory, 4676 Columbia Parkway, Mailstop R–42, Cincinnati, Ohio 45226–1998, or by calling (513) 841–4475. Additional technical assistance may be obtained from Ms. L. Barbara Connally, Project Administrator, Screening and Notification Section, NIOSH, Robert A. Taft Laboratory, 4676 Columbia Parkway, Mailstop R–42, Cincinnati, Ohio 45226–1998, or by calling (513) 841–4475.

Please refer to Announcement Number 349 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 9, 1993.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–19619 Filed 8–13–93; 8:45 am]

BILLING CODE 4160–19–P

National Institutes of Health

Meeting of the Fogarty International Center Advisory Board

John E. Fogarty International Center for Advanced Study in the Health Sciences

Pursuant to Public Law 92–463, notice is hereby given of the twenty-fifth meeting of the Fogarty International Center (FIC) Advisory Board, October 5, 1993, in the Lawton Chiles International House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 12:15 p.m. The agenda will include a report by the Director, FIC; a report on the development of FIC's Long-Range Plan; discussions of NIH research in alternative medicine and collaborations with FIC's biodiversity initiative; and a report on health issues from the Afro-American summit in Gabon.

In accordance with the provisions of secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 1:15 p.m. to adjournment for the review of applications to the International Research Fellowship and Senior International Fellowship, and Fogarty International Research Collaboration Awards programs.

Myra Halem, Committee Management Assistant, Fogarty International Center, Building 31, room B2C08, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for International Legislation and Advisory Activities, Fogarty International Center (Executive Secretary), building 31, room B2C08, telephone 301–496–1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Halem at least 2 weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Awards Program, and 93.934, Fogarty International Research Collaboration Award)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19686 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on October 14–15, 1993. The meeting will be held in Building 31, C Wing, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on October 14 and from 9 a.m. to adjournment on October 15 for discussion and review of the Division budget and review of

concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9 a.m. to approximately noon on October 14 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Carole A. Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact Dr. David McB. Howell, (301) 496–6927, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19683 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, September 27–28, 1993. The meeting will be held in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. The meeting of the Subcommittee on Planning will be held on September 27 in Building 31, room 2A03.

The Council meeting will be open to the public on September 27 from 10 a.m. until 5 p.m. The agenda includes a report by the Director, NICHD, Annual Review of the Intramural Research Program, and a report by the National Center for Medical Rehabilitation Research, NICHD. The meeting will be open on September 28 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on September 27 from 8 a.m. to 9:45 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the full Council will be closed to the public on September 28 from 8 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19682 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held September 27–28, 1993, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on September 27 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on September 28 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, room 2039, Bethesda, Maryland 20892, (telephone (301) 496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19687 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control (DCPC), National Cancer Institute, and its Subcommittees on October 21–22, 1993. The full Board will meet in Conference Room 6, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees will be held at the

Executive Plaza Complex at the times and places listed below. The meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meetings and rosters of committee members, upon request.

Other information pertaining to these meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 318, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–8526), upon request.

Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control.

Executive Secretary: Linda M. Bremerman, EP N, room 318, Bethesda, MD 20892; (301) 496–8526.

Dates of Meeting: October 21–22, 1993.

Place of Meeting: Building 31, Conference Room 6.

Open: October 21—12:30 p.m. to 5 p.m.

Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Open: October 22—8:30 a.m. to 3 p.m.

Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Name of Committee: Surveillance Subcommittee.

Executive Secretary: Linda M. Bremerman, EP N, room 318, Bethesda, MD 20892; (301) 496–8526.

Date of Meeting: October 21, 1993.

Place of Meeting: Executive Plaza North, Conference Room J, 6130 Executive Boulevard, Rockville, MD 20892.

Open: 8:30 a.m. to 11 a.m.

Agenda: Discuss current and future programs of Surveillance Subcommittee and review of concepts being considered for funding.

Name of Committee: Early Detection and Community Oncology Subcommittee.

Executive Secretary: Linda M. Bremerman, EP N, room 318, Bethesda, MD 20892; (301) 496–8526.

Date of Meeting: October 21, 1993.

Place of Meeting: Executive Plaza South, Conference Room T–41, 6120 Executive Boulevard, Rockville, MD 20892.

Open: 8:30 a.m. to 11 a.m.

Agenda: Discuss current and future programs of Early Detection and Community Oncology Subcommittee and review of concepts being considered for funding.

Name of Committee: Cancer Control Science subcommittee.

Executive Secretary: Linda M. Bremerman, EP N, room 318, Bethesda, MD 20892; (301) 496–8526.

Date of Meeting: October 21, 1993.

Place of Meeting: Executive Plaza North, Conference room G, 6130 Executive Boulevard, Rockville, MD 20892.

Open: 8:30 a.m. to 11 a.m.

Agenda: Discuss current and future programs of Cancer Control Science Subcommittee and review of concepts being considered for funding.

Name of Committee: Cancer Prevention Research Subcommittee.

Executive Secretary: Linda M. Bremerman, EP N, room 318, Bethesda, MD 20892; (301) 496–8526.

Date of Meeting: October 21, 1993.

Place of Meeting: Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Rockville, MD 20892.

Open: 8:30 a.m. to 11 a.m.

Agenda: Discuss current and future programs of Cancer Prevention Research Subcommittee and review of concepts being considered for funding.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Linda M. Bremerman, (301) 496–8526 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93,393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: August 3, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19626 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the Ad Hoc Balance and Balance Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Balance and Balance Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on September 21, 1993. The meeting will take place from 8:30 a.m. to 12 noon in room 3C05, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which is open to the public, will discuss changes in the scientific field of balance and balance disorders since the Research Plan was written, compare the research portfolio of the Institute with the priorities in the Research Plan to determine areas of emphasis and levels of activity, and to identify gaps and to suggest new initiatives in preparation for the updating of the balance and balance disorders section of the Research Plan. Attendance by the public will be limited to the space available.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Ms. Monica M. Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: August 3, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19627 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Dr. Herman Teitlebaum (301) 594–7245
Date of Meeting: September 9, 1993
Place of Meeting: Westwood Bldg., Rm 321, NIH, Bethesda, MD, (Telephone Conference)
Time of Meeting: 3 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19684 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following study sections for September through November 1993, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public for approximately one half hour at the beginning of the first session of the first day of the meeting during the discussion of administrative details relating to study section business. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, whose telephone number is provided. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the scientific review administrator at least two weeks in advance of the meeting.

Study section	September-November 1993 meetings	Time	Location
Allergy & Immunology, Mr. Howard M. Berman, Tel. 301–594–7234.	Oct. 18–20	8:30	Holiday Inn, Chevy Chase, MD.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Tel. 301–594–7228.	Oct. 27–29	8:30	Residence Inn Marriott, Bethesda, MD.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Tel. 301–594–7297.	Oct. 6–8	8:30	Holiday Inn, Chevy Chase, MD.
Behavioral Medicine, Ms. Carol Campbell, Tel. 301–594–7165 .	Oct. 6–8	8:30	Omni Shoreham Hotel, Washington, DC.
Biochemical Endocrinology, Dr. Michael Knecht, Tel. 301–594–7247.	Oct. 6–8	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Biochemistry, Dr. Adolphus P. Toliver, Tel. 301–594–7263	Oct. 26–28	8:00	The Georgetown Inn, Washington, DC.
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, Tel. 301–594–7212.	Oct. 21–23	9:00	Holiday Inn, Bethesda, MD.
Biophysical Chemistry, Dr. John Beisler, Tel. 301–594–7149	Oct. 14–16	8:30	Ramada Hotel, Bethesda, MD.
Bio-Psychology, Dr. A. Keith Murray, Tel. 301–594–7145	Sept. 29–Oct. 1	9:00	Holiday Inn, Chevy Chase, MD.
Cardiovascular, Dr. Gordon L. Johnson, Tel. 301–594–7216	Oct. 25–27	8:00	Holiday Inn Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Anthony Chung, Tel. 301–594–7338.	Nov. 11–13	8:30	Holiday Inn, Chevy Chase, MD.
Cellular Biology and Physiology–1, Dr. Gerald Greenhouse, Tel. 301–594–7385.	Sept. 29–Oct. 1	8:00	American Inn, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Tel. 301–594–7387.	Oct. 13–15	8:30	Holiday Inn, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Tel. 301–594–7154.	Oct. 21–23	8:00	Residence Inn Marriott, Bethesda, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Tel. 301–594–7295.	Oct. 18–20	8:30	Hotel Washington, Washington, DC.
Endocrinology, Dr. Syed Amir, Tel. 301–594–7229	Oct. 6–8	8:00	Holiday Inn, Georgetown, DC.
Epidemiology & Disease Control-1, Dr. Scott Osborne, Tel. 301–594–7060.	Oct. 13–15	8:30	Holiday Inn, Georgetown, DC.
Epidemology & Disease Control-2, Dr. H. M. Stiles, Tel. 301–594–7194.	Oct. 13–15	8:30	Embassy Suites Hotel, Alexandria, VA.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Tel. 301–594–7344.	Oct. 13–15	8:00	The Georgetown Inn, Washington, DC.
Experimental Immunology, Dr. Calbert Laing, Tel. 301–594–7190.	Oct. 6–8	8:30	The Latham Hotel, Georgetown, DC.
Experimental Therapeutics-1, Dr. Philip Perkins, Tel. 301–594–7324.	Oct. 20–22	8:30	The Latham Hotel, Georgetown, DC.
Experimental Therapeutics-2, Dr. Marica Litwack, Tel. 301–594–7366.	Oct. 27–29	8:30	Holiday Inn, Chevy Chase, MD.

Study section	September-November 1993 meetings	Time	Location
Experimental Virology, Dr. Garrett V. Keefer, Tel. 301–594–7099.	Oct. 18–20	8:30	NIH, Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A–1, Dr. Harold Davidson, Tel. 301–594–7313.	Oct. 25–27	8:30	NIH, Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A–2, Dr. Mushtaq Khan, Tel. 301–594–7168	Oct. 4–6	8:30	One Washington Circle Hotel, Washington, DC.
General Medicine B, Dr. Daniel McDonald, Tel. 301–594–7301	Oct. 20–22	8:00	Holiday Inn, Chevy Chase, MD.
Genetics, Dr. David Remondini, Tel. 301–594–7202	Oct. 14–16	9:00	Holiday Inn, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, Tel. 301–594–7336	Oct. 20–22	9:00	Holiday Inn, Bethesda, MD.
Hearing Research, Dr. Joseph Kimm, Tel. 301–594–7257	Oct. 11–13	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Hematology-1, Dr. Clark Lum, Tel. 301–594–7260	Oct. 21–23	8:00	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, Tel. 301–594–7261	Oct. 6–8	8:30	The Latham Hotel, Georgetown, DC.
Human Development & Aging-1, Dr. Teresa Levitin, Tel. 301–594–7141.	Oct. 20–22	9:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging-2, Dr. Peggy McCardle, Tel. 301–594–7293.	Oct. 4–6	8:30	Holiday Inn, Chevy Chase, MD.
Human Development & Aging-3, Dr. Anita Sostek, Tel. 301–594–7358.	Oct. 20–22	9:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Embryology & Development-1, Dr. Arthur Hoversland, Tel. 301–594–7253.	Oct. 21–22	8:00	Holiday Inn Crowne Plaza, Rockville, MD.
Human Embryology & Development-2, Dr. Arthur Hoversland, Tel. 301–594–7253.	Oct. 7–8	8:00	Holiday Inn Crowne Plaza, Rockville, MD.
Immunobiology, Dr. Betty Hayden, Tel. 301–594–7310	Oct. 27–29	8:30	Hoilday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, Tel. 301–594–7175.	Oct. 20–22	8:30	Holiday Inn, Chevy Chase, MD.
Lung Biology and Pathology, Dr. Anne Clark, Tel. 301–594–7115.	Oct. 13–15	8:00	Holiday Inn, Chevy Chase, MD.
Mammalian Genetics, Dr. Jerry Roberts, Tel. 301–594–7051	Oct. 20–22	9:00	Embassy Suites, Washington, DC.
Medical Biochemistry, Dr. Alexander Liacouras, Tel. 301–594–7264.	Oct. 14–16	8:30	Holiday Inn, Bethesda, MD.
Medicinal Chemistry, Dr. Ronald Dubois, Tel. 301–594–7163	Oct. 13–15	8:30	Holiday Inn, Georgetown, DC.
Metabolic Pathology, Dr. Marcelina Powers, Tel. 301–594–7120.	Oct. 27–29	8:00	Ramada Hotel, Bethesda, MD.
Metabolism, Dr. Krish Krishnan, Tel. 301–594–7156	Oct. 27–29	8:00	Holiday Inn, Georgetown, DC.
Metallobiochemistry, Dr. Edward Zapolski, Tel. 301–594–7302	Oct. 28–30	8:30	Holiday Inn, Georgetown, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Tel. 301–594–7176.	Oct. 27–29	8:30	Holiday Inn, Governor's House, Washington, DC.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, Tel. 301–594–7167.	Oct. 13–15	8:30	Hyatt Regency, Bethesda, MD.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, Tel. 301–594–7147.	Oct. 21–23	8:30	Holiday Inn, Chevy Chase, MD.
Molecular Biology, Dr. Robert Su, Tel. 301–594–7320	Oct. 14–16	8:30	Holiday Inn, Georgetown, DC.
Molecular Cytology, Dr. Ramesh Nayak, Tel. 301–594–7169	Oct. 7–8	8:00	Holiday Inn, Chevy Chase, MD.
Neurological Sciences-1, Dr. Andrew Mariani, Tel. 301–594–7206.	Oct. 13–15	8:00	Holiday Inn, Governor's House, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, Tel. 301–594–7356.	Oct. 12–14	8:00	Holiday Inn, Chevy Chase, MD.
Neurology A, Dr. Joe Marwah, Tel. 301–594–7158	Nov. 4–6	8:00	Washington Marriott, Washington, DC.
Neurology B–1, Dr. Lillian Pubols, Tel. 301–594–7325	Oct. 5–7	8:30	Holiday Inn, Governor's House, Washington, DC.
Neurology B–2, Dr. Herman Teitelbaum, Tel. 301–594–7245	Oct. 13–15	8:30	Holiday Inn, Bethesda, MD.
Neurology C, Dr. Kenneth Newrock, Tel. 301–594–7123	Oct. 6–8	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Tel. 301–594–7080.	Oct. 5–7	8:00	Holiday Inn, Chevy Chase, MD.
Nutrition, Dr. Sooja Kim, Tel. 301–594–7174	Oct. 6–8	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Oral Biology & Medicine-1, Dr. Larry Pinkus, Tel. 301–594–7315.	Oct. 13–15	8:30	One Washington Circle Hotel, Washington, DC.
Oral Biology & Medicine-2, Dr. Priscilla Chen, Tel. 301–594–7315.	Oct. 18–20	8:30	Embassy Suites Hotel, Alexandria, VA.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Tel. 301–594–7282.	Oct. 13–15	8:30	Holiday Inn, Chevy Chase, MD.
Pathobiochemistry, Dr. Zakir Bengali, Tel. 301–594–7317	Oct. 13–15	8:30	The Savoy Suites Hotel, Washington, DC.
Pathology A, Dr. Bruce Maurer, Tel. 301–594–7236	Oct. 5–8	7:00 p.m	Holiday Inn, Bethesda, MD.
Pathology B, Dr. Martin Padarathsingh, Tel. 301–594–7192	Oct. 12–15	7:00 p.m	The Savoy Suites Hotel, Washington, DC.
Pharmacology, Dr. Joseph Kaiser, Tel. 301–594–7241	Oct. 13–15	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Tel. 301–594–7166	Oct. 19–21	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Jerry Critz, Tel. 301–594–7322	Oct. 28–30	8:30	Holiday Inn, Chevy Chase, MD.
Physiology, Dr. Michael A. Lang, Tel. 301–594–7332	Oct. 13–15	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.

Study section	September-November 1993 meetings	Time	Location
Radiation, Dr. Paul Strudler, Tel. 301–594–7152	Oct. 18–20	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Reproductive Biology, Dr. Dennis Leszczynski, Tel. 301–594–7218.	Oct. 4–6	8:30	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar A. Shaikh, Tel. 301–594–7368.	Oct. 4–6	8:00	The River Inn, Washington, DC.
Respiratory & Applied Physiology Dr. Everett Sinnett, Tel. 301–594–7220.	Oct. 25–27	8:30	Holiday Inn, Chevy Chase, MD.
Safety & Occupational Health, Dr. Gopal Sharma, Tel. 301–594–7130.	Oct. 5–6	8:00	Embassy Suites, Chevy Chase Pavilion, Washington, DC.
Sensory Disorders & Language, Dr. Jane Hu, Tel. 301–594–7269.	Oct. 6–8	8:30	Holiday Inn, Capitol Hill, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, Tel. 301–594–7340.	Oct. 14–16	8:00	Embassy Suites Hotel, Crystal City, VA.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Tel. 301–594–7258.	Oct. 18–19	8:00	Holiday Inn, Chevy Chase, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Tel. 301–594–7308.	Oct. 20–22	2:00 p.m	Holiday Inn, Bethesda, MD.
Toxicology-1, Dr. Alfred Marozzi, Tel. 301–594–7278	Oct. 27–29	8:00	American Inn, Bethesda, MD.
Toxicology-2, Dr. Alfred Marozzi, Tel. 301–594–7278	Oct. 20–22	8:00	American Inn, Bethesda, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Tel. 301–594–7078.	Oct. 6–8	8:00	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, Tel. 301–594–7108	Oct. 13–15	8:30	Holiday Inn, Bethesda, MD.
Visual Sciences A, Dr. Anita Suran, Tel. 301–594–7132	Oct. 20–22	8:00	Holiday Inn, Bethesda, MD.
Visual Sciences B, Dr. Leonard Jakubczak, Tel. 301–594–7189..	Oct. 6–8	8:30	Omni Georgetown Hotel, Washington, DC.
Visual Sciences C, Dr. Carole Jelsena, Tel. 301–594–7311.	Oct. 13–15	8:30	Holiday Inn, Chevy Chase, MD.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19683 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

[Social Security Acquiescence Ruling 93-6(8)]

Brewster on Behalf of Keller v. Sullivan; Interpretation of the Secretary's Regulation Regarding Presumption of Death

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Principal Deputy Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 93-6(8).

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Darlynda Bogle, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-4237.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Eighth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after August 16, 1993. If we made a determination or decision on your application for benefits between August 12, 1992, the date of the Court of Appeals' decision, and August 16, 1993, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security - Disability Insurance; 93.803 Social Security - Retirement Insurance; 93.805 Social Security - Survivors Insurance; 93.807 - Supplemental Security Income.)

Louis D. Enoff

Principal Deputy Commissioner of Social Security

Acquiescence Ruling 93-6(8)

Brewster on Behalf of Keller v. *Sullivan*, 972 F.2d 898 (8th Cir. 1992)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act

Issue: Whether a presumption of death which must be rebutted by the Social Security Administration (SSA) arises under 20 CFR 404.721(b) once a claimant shows that an individual has been absent from his or her residence and has not been heard from for seven

years or whether the presumption only arises if the claimant also proves there is no apparent reason for the absence.

Statute/Regulation/Ruling Citation: Sections 205(a) and 205(g) of the Social Security Act, (42 U.S.C. 405(a) and 405(g)); 20 CFR 404.721(b).

Circuit: Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota).

Brewster on Behalf of Keller v. *Sullivan*, 972 F.2d 898 (8th Cir. 1992).

Applicability of Ruling: This ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge hearing and Appeals Council review).

Description of Case: Plaintiff Sherry Brewster's husband, Joseph Keller, was a pilot and airplane mechanic employed by Air Cortez, located in Ontario, California. Keller has been missing since May 1980.

In 1981 and 1984, plaintiff filed applications for survivors' benefits on behalf of the couple's two minor children. The evidence developed in processing the claims showed that, in April 1980, Keller supposedly piloted a company DC-3 airplane from Ontario, California to San Antonio, Texas for modifications. Keller later telephoned the company president to inform him that he had arrived in San Antonio and that he would return to Ontario on May 9 or 10 after the modifications were completed. When Keller failed to arrive, the company president called the San Antonio airport and learned that Keller had never appeared, and further discovered that a company credit card was missing. A police report was subsequently filed.

The Ontario police contacted the San Antonio police and learned that Keller had been under investigation for drug smuggling. According to the police report, the airplane had not landed at the San Antonio airport as Keller had reported; rather, the plane had landed at an airport in Waco, Texas, where Keller and a man named John Flowers had been from April 27 until May 9, 1980. On May 9, 1980, the airplane had refueled with 800 gallons of gasoline, which had been charged with the company credit card. Drug agents reported seeing the airplane depart in a southerly direction, and a confidential informant told police that the airplane might be located in Barranquilla, Colombia, South America. The police report further stated that plaintiff and Keller's brother had been informed that Keller had died in an airplane crash in Colombia. The police terminated their investigation and advised Keller's family to contact the United States Consulate in South America.

Keller's family contacted the consulate and was informed that a DC-3 airplane with two bodies had crashed on May 13, 1980, near Barranquilla, but neither the airplane nor the bodies could be positively identified. Keller's family was unable to supply adequate dental records to permit identification. They attempted to secure dental records from the Veterans Administration (VA), but because Keller had not been a claimant, the VA had no records.

During the course of their investigation, officers had searched Keller's locker at Air Cortez, as well as his apartment. In the locker, officers found a grenade and a driver's license and birth certificate in the name of Emery Whitthram. Officers also learned that Keller had stated on several occasions that he wanted "to chuck it all and move to Costa Rica."

The Secretary denied plaintiff's 1981 and 1984 applications on the ground that she had failed to submit direct evidence that her husband was dead. The Secretary further found that, because Keller had not yet been missing for seven years, he could not be presumed dead under the regulations. In May 1987, plaintiff filed a third application, relying on the presumption of death created by 20 CFR 404.721(b). The regulation provides that, if a claimant cannot prove that a person is dead, the Secretary will presume death if the claimant offers "[s]igned statements by those in a position to know and other records which show that the person has been absent from his or her residence for no apparent reason, and has not been heard from, for at least 7 years."

In addition to the information previously submitted, plaintiff provided a statement indicating that neither she nor her children had seen or heard from Keller since May 1980, and that she believed he had died in an airplane crash in Colombia, South America in May 1980. She also provided statements from friends and relatives stating that they had not heard from Keller since May 1980 and knew of no problems that would account for his disappearance. Lastly, plaintiff submitted a statement from John Flowers' father that he had not heard from his son since 1980.

Initially, plaintiff's application was granted, but the case was reopened and, on reconsideration, the decision awarding benefits was reversed. Plaintiff filed a request for a hearing and the Administrative Law Judge (ALJ) upheld the denial, finding that plaintiff had not established that Keller had disappeared for "no apparent reason." The ALJ found that, while it was possible that Keller and Flowers had died in the plane crash, it was also possible that Keller had gone into hiding because he was under investigation for drug smuggling or because he had stolen the airplane and credit card. The ALJ also noted the possibility that Keller had "arranged the crash of the aircraft by use of a grenade modified in a similar way to the one found among Keller's possessions." The Appeals Council upheld the denial of benefits.

The district court for the District of Minnesota found that plaintiff had not proved that Keller had been missing for "no apparent reason," and in the alternative found that the Secretary had rebutted the presumption of death.

Holding: In reversing the district court's holding, the Eighth Circuit Court of Appeals held that under 20 CFR 404.721(b) a presumption of death arises when a claimant proves a wage earner has not been seen or heard from for seven years. The court observed that this rule is consistent with the common-law origin of the presumption of death, noting that "it is unfair to require that the affairs of other persons affected by those of the missing person be held in abeyance indeterminately, especially when there is a good chance the missing person is in fact dead." Also, the court rejected the Secretary's position that the claimant must prove that a wage earner's disappearance was for no apparent reason, stating that such a requirement "virtually creates a presumption of life rather than death."

Additionally, the court rejected the Secretary's alternative argument that the Agency had rebutted the presumption, stating that to rebut the presumption of death "requires more from the Secretary than mere conjecture as to possible explanations for the wage earner['s] disappearance." Rather, the court said, the Secretary must set forth evidence that "rationally explain[s] the anomaly of the disappearance in a manner consistent with continued life." Accordingly, Keller's suspected criminal activity, along with his stated desire to begin a new life in Costa Rica, were insufficient in the court's view to overcome the presumption of death. The court also pointed to other "strong circumstantial evidence that Keller is dead."

Statement As To How Brewster Differs From Social Security Policy

By the terms of 20 CFR 404.721(b), the presumption of death arises only when an individual "has been absent from his or her residence for no apparent reason, and has not been heard from, for at least 7 years." This regulation has been

interpreted by SSA to mean that a claimant bears the burden of proving three elements to raise a presumption of an individual's death:

(1) The individual has disappeared;

(2) The disappearance has lasted for seven years; and

(3) There is no apparent reason for the disappearance.

The decision of the Court of Appeals for the Eighth Circuit in *Brewster* holds that the plaintiff only bears the burden of proving the first two elements in order to raise the presumption, and that SSA bears the burden of rebutting the presumption either by presenting evidence that the missing individual is alive or by providing an explanation, other than death, to account for the individual's absence in a manner that is consistent with continued life rather than death.

Explanation of How SSA Will Apply The Decision Within The Circuit

This ruling applies only in cases in which the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, Administrative Law Judge hearing or Appeals Council review.

In cases which involve the application of 20 CFR 404.721(b), the presumption of death arises if the claimant presents evidence that the individual has been absent from his or her residence and not heard from for seven years. The Agency then must bear the burden of rebutting the presumption, either by presenting evidence that the missing individual is alive or by providing an explanation, other than death, to account for the individual's absence in a manner that is consistent with continued life rather than death.

[FR Doc. 93–19679 Filed 8–13–93; 8:45 am]

BILLING CODE 4190–29–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–03–4410–02]

Proposed Resource Management Plan/ Final Environmental Statement; Diamond Mountain Resource Area, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1970, section 202 of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, the proposed Resource Management Plan (RMP)/final Environmental Impact Statement (EIS) has been prepared for the Diamond Mountain Resource Area, Vernal District, Utah, and is available for public review. The proposed (RMP)/ final EIS describes and analyzes options for managing approximately 709,000 acres of public land and 854,000 acres of Federal mineral estate in Daggett County, Duchesne County, and portions of Uintah County, in northeastern Utah.

FOR FURTHER INFORMATION CONTACT: Ron Trogstad, Project Manager, or Jean Nitschke-Sinclear, Team Leader, Bureau of Land Management, Vernal District Office, 170 South 500 East, Vernal, Utah 84078, telephone 801–781–4400.

SUPPLEMENTARY INFORMATION: The proposed RMP/final EIS analyzes five alternatives to resolve the following three issues: resource uses affecting vegetation, soils and watershed values; special management emphasis areas; and resource availability and accessibility. Each alternative represents a complete management plan for the area. The alternatives can be summarized as (A) no action or change from current management, (B) ecological systems, (C) forage production, (D) resource development, and (E) the proposed plan, which is an optimal mix of management choices from the other four alternatives.

The proposed plan reflects modifications to the draft RMP/EIS's preferred alternative (Alternative E) as a result of public comment and further agency analysis. The proposed plan involves changes to improve clarity, correct weaknesses, and provide modifications to the preferred alternative and environmental analysis, or it provides a compromise on a preferred alternative decision—either selecting a decision from another alternative or developing a new decision. All modifications are within the range of alternatives discussed and analyzed in the draft RMP/EIS.

Wild and Scenic Rivers

Six eligible river segments were analyzed in the proposed RMP/final EIS regarding their suitability for designation into the National Wild and Scenic River System. The suitability determinations are as follows:

Water segment	Values present	Suitable
Upper Green River	Special-status fish species, scenic values, cultural resources, wildlife values, and riparian system.	Yes for scenic.
Middle Green River	Special-status fish species, riparian systems	No.
Lower Green River	Special-status fish species, recreation values, and riparian systems.	Yes for scenic.
Nine Mile Creek, East	Scenic values, cultural resources, and riparian systems	No.
Nine Mile Creek, West	Scenic values, cultural resources, and riparian systems	No.
Argyle Creek	Scenic values and riparian systems	No.

Areas of Critical Environmental Concern (ACEC) Considered

Seven ACECs were considered for designation. The acreage of these units varies among alternatives and is displayed on the following table:

Area name	Critical concerns	Acreage by alternative				
		Proposed plan	A	B	C	D
Browns Park Complex (includes existing Green River Scenic Corridor ACEC and Crouse Canyon).	Crucial deer winter range, scenic values, unique cultural and historic values, Class I trout fishery, riparian values, special-status plant and animal habitat (bald eagle, peregrine falcon, Colorado cutthroat trout, river otter, and Ute Ladies' Tresses).	55,700	19,400	55,700	19,400	19,400
Lears Canyon	Relict vegetation community	1,400	0	1,400	1,400	0
Middle and Lower Green River.	Special-status animal and plant species habitat (bald eagle, peregrine falcon, whooping crane, western yellow-billed 'cuckoo,' Swainson's hawk, western snowy plover, long-billed curlew, white-faced ibis, spotted bat, river otter, Uinta Basin hookless cactus, Colorado Squawfish, humpback chub, bonytail chub, razorback sucker), scenic values, and natural characteristics.	7,900	0	12,700	0	0
Nine Mile Canyon	Cultural resources (Fremont rockart and occupational sites), special-status plant habitat (Toad-flax cress and Uinta Basin hookless cactus).	50,800	0	50,800	0	0
Pariette Wetlands	Riparian systems, biological diversity associated with wetlands, special-status plant habitat (Uinta Basin hookless cactus).	11,600	0	11,600	0	0
Red Creek	Watershed, riparian potential, fragile soils, Colorado River salinity control.	24,020	24,020	24,020	24,020	0
Red Mountain-Dry Fork Complex.	Cultural and paleontological values, relict vegetation communities (Castle Cove and Red Mountain proper), scenic values, riparian system.	25,800	0	25,800	2,200	0

Management prescriptions for the potential ACECs vary by alternative and are described in the proposed RMP/final EIS.

Public participation has occurred through the RMP/EIS process. A Notice of Intent was filed in the **Federal Register** in January 1989. Since that time, public meetings, workshops, mailings, and briefings have been conducted to solicit comments and ideas. The Draft RMP/EIS was published in January 1992, followed by a 90-day comment period. All comments presented throughout the process have been considered.

Copies of the proposed RMP/final EIS are available from the Vernal District Office, 170 South 500 East, Vernal, Utah 84078, 801–781–4400. Public reading copies will be available for review at the public libraries in Duchesne and Uintah Counties, the Daggett County Office Building, all government-document-depository libraries, and at the following BLM locations: Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240; Office of External Affairs, Utah State Office, PO Box 45155, 324 South State Street, Salt Lake City, Utah 84145–0155; and Vernal District Office, 170 South 500 East, Vernal, Utah 84078. Background information and maps used in developing the proposed RMP/final EIS are available for review at the Vernal District Office.

Written protests on the proposed RMP/final EIS will be accepted for 30 days following the date the Environmental Protection Agency publishes the Notice of Filing of this document in the **Federal Register**.

Any part of this proposed RMP/final EIS may be protested only by parties who participated in the planning process. Protests must pertain to issues that were identified in the plan or through the public comment process. Protests must be sent to the Director (760), Bureau of Land Management (MS406LS), 1849 C Street, NW., Washington, DC 20240. Protests must minimally contain the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts being protested and a citing of pages, paragraph, maps, etc., of the proposed RMP, where practical.
4. A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
5. A concise statement as to why the protester believes the BLM State Director's decision is incorrect.

At the end of the 30-day protest period, the proposed plan, excluding any portion under protest will become final. Approval will be withheld on any portion of the plan under protest until final action has been completed on such protest.

G. William Lamb,

Acting State Director.

[FR Doc. 93–19570 Filed 8–13–93; 8:45 am]

BILLING CODE 4310–DQ–M

[UT-942–4212–13; UTU–47295]

Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 240.00 acres of public land out of Federal ownership. This action will also open 174.00 acres of reconveyed land to appropriation under the public land laws.

FOR FURTHER INFORMATION CONTACT: Michael L. Crocker, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4118.

SUPPLEMENTARY INFORMATION: 1. The United States has issued an exchange conveyance document to Harley W. Sanders and Garrell N. Sanders for the surface estate of the following described land pursuant to Section 206 of the Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Salt Lake Meridian

T. 11 N., R. 18 W.,
Sec. 20, NE¼, E½SE¼.
Containing 240.00 acres.

2. In exchange for the lands listed in paragraph 1, the United States received the surface estate of the following described land:

Salt Lake Meridian

T. 11 N., R. 18 W.,
Sec. 7, W½NE¼, NE¼NW¼, NE¼SW¼, north 28 rods of NW¼SE¼.
Containing 174.00 acres.

3. At 7:45 a.m., on September 15, 1993, the lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on September 15, 1993 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The purpose of this exchange was to exchange public lands which were isolated and uneconomical to manage by BLM or any other Federal agency. This exchange created a more logical and efficient land management pattern that will better serve the public interest.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals, Operations.

[FR Doc. 93–19680 Filed 8–13–93; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–020–4210–05; U–70301]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action. Recreation and Public Purposes (R&PP) Act classification in Tooele County, Utah.

SUMMARY: The following public land in Tooele County, Utah has been examined and found suitable for classification for conveyance to the State of Utah under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The State of Utah, Division of Facilities and Management, proposes to use the land for an artistic structure known as the Tree of Utah.

DATES: Comments must be received by October 15, 1993.

ADDRESS: Comments should be sent to the District Manager, Salt Lake District BLM, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: LaVerne Steah, BLM Salt Lake District Office, (801) 977–4380.

SUPPLEMENTARY INFORMATION: The following described land has been found suitable for conveyance under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et seq.)

Salt Lake Meridian, Utah

T. 1 S., R. 15 W.
Sec. 21, N½NE¼NE¼NE¼NW¼
Containing approximately 1.25 acres.

The land is not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The 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 reservation for ditches and canals constructed by the authority of the United States, Act of August 30, 1980 (26 Stat. 391; 43 U.S.C. 945 (1970)).

(3) All minerals will be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

(4) A right-of-way, serial number U–0141748, for a Federal aid highway granted under the Act of August 27, 1958 (72 Stat. 885 23 U.S.C. 317).

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The segregative effect will terminate upon the notice in the **Federal Register** or eighteen months from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification to the District Manager at the address listed above. Notice is hereby given that an opportunity for the public to comment is given within the comment period identified above.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a moment. Comments on the classification are restricted to whether the land is physically suited for a monument, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application, whether the BLM followed proper administrative procedures in reaching the decision or any other factor not directly related to the suitability of the land for a monument.

Deane H. Zeller,

District Manager.

[FR Doc. 93–19681 Filed 8–13–93; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Availability of the Draft Bitterroot Ecosystem Chapter of the Recovery Plan for the Grizzly Bear (Ursus arctos horribilis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft Bitterroot Ecosystem Chapter (Chapter) of the Recovery Plan for the Grizzly Bear (*Ursus arctos horribilis*). This Chapter addresses recovery of the grizzly bear population in the Bitterroot Mountains of Idaho and Montana and is intended to be added to the Grizzly Bear Recovery Plan. The Service solicits review and comment from the public on this draft Chapter.

DATES: Comments on the draft Chapter must be received on or before October 20, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Chapter may obtain a copy by contacting the U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812. Written comments or materials regarding this Chapter should be sent to the same address. Comments and materials received are available on request for public inspection, by appointment, or during regular business hours at the above address for the duration of the comment period.

FOR FURTHER INFORMATION CONTACT: Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service in Missoula, Montana (see **ADDRESSES** above), telephone (406) 329–3223.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal 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 (Service) 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 suggested actions that Federal and State agencies and other involved parties can undertake for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and provide initial estimates of time and cost for implementing the needed recovery measures.

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 comment 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 also will take these comments into account in the course of implementing approved recovery plans.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1975 (40 FR 31734), due to current and potential threats to the species' populations and habitat from human activities. A plan for the recovery of grizzly bears in the 48 conterminous States was recently revised and is being finalized for approval. The proposed Bitterroots Recovery Chapter (Chapter) is intended to be added to that recovery plan. It addresses recovery of grizzly bears in the Bitterroot Mountains of Idaho and Montana. Similar recovery chapters already have been completed for other ecosystems where grizzly bears still exist within the conterminous 48 States. These chapters are included in the Grizzly Bear Recovery Plan.

Threats to grizzly bear populations come primarily from habitat modification caused by human activities and from direct bear/human conflicts resulting from recreational and resource use activities, highway and railroad corridors, illegal mortality, etc. The grizzly bear population in the Bitterroots, and in each of the ecosystems covered in the Grizzly Bear Recovery Plan, can be delisted independently once recovery criteria stated in the plan are met.

Public Comments Solicited

The Service solicits written comments on the Chapter described. All comments received by the date specified in the DATES section above will be considered prior to approval of the Chapter.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 9, 1993.

John L. Spinks Jr.,

Deputy Regional Director.

[FR Doc. 93–19620 Filed 8–13–93; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 431 (Sub. No. 2)]

Review of the General Purpose Costing System; Cost Recovery Percentage

AGENCY: Interstate Commerce Commission.

ACTION: Notice of methodological change.

SUMMARY: The Railroad Accounting Principles Board (RAPB) recommended that the Commission review, at regular intervals, its general purpose costing system known as the Uniform Railroad Costing System (URCS). As a result of our first review, the Commission is seeking comment on proposed modifications of the statistical procedures that underlie the URCS variability study data base. This decision also proposes revisions for various non-statistical URCS costing issues.

The Commission intends to issue a decision requesting comment on issues concerning the URCS regression methodology and selection of regression equations in the fall of this year. Parties are advised that, in accordance with our decision of April 20, 1993, the decision will not be issued earlier then 60 days after the service date of this decision.

DATES: This decision is effective on August 16, 1993. Comments are due November 15, 1993, and must be served on all parties. Reply comments are due December 14, 1993.

ADDRESSES: An original and 15 copies of all comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas A. Schmitz, (202) 927–5720; or H. Jeff Warren, (202) 927–6242. [TDD for Hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: The RAPB recommended the Commission conduct periodic reviews of URCS. By decision served January 11, 1990 in Ex Parte No. 431 (Sub. No. 2). *Review of the General Purpose Costing System*, the Commission initiated its first review.

This decision addresses proposals concerning the regression data base—specifically: (1) The regression account groups; (2) treatment of merged railroads; (3) inclusion of data for Consolidated Rail Corporation (ConRail); (4) evaluation of outliers; and (5) use of the root mean squared error of forecast. This decision also proposes changes to various non-statistical URCS costing issues. These include: (1) Use of a weighted average default variability factor; (2) discontinuance of plain 40 box car reporting; (3) an unit cost updating procedure; (4) a updated train switching conversion factor; (5) allocation of switching and terminal data to individual carriers; and (6) revisions to URCS Phase III and waybill trailer-on-flat-car and container-on-flat-car (TOFC/COFC) costing procedures.

Many of the issues addressed in this proposal will affect the Cost Recovery Percentage (CRP) computations; therefore, we are serving this decision on parties in Ex Parte No. 399, *Cost Recovery Percentage*.

Additional information is contained in the Commission's 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, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in the proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The purpose of our regulation is to improve URCS, which is used to develop cost for Class I (very large) railroads. No new reporting requirements will be placed on the railroad industry, or on small entities that deal with railroads. The economic impact on small entities, if any, will be to provide them with better estimates of Class I railroad variable costs and is not

likely to be significant within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10705a and 10709.

Decided: July 21, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19652 Filed 8–13–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–167 (Sub. No. 1126X)]

Consolidated Rail Corp.—Abandonment Exemption—In Lawrence County, PA

Consolidated Rail Corporation has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon approximately 4.55 miles of rail line (Castle Industrial Track) in New Castle, Lawrence County, PA. The track in question extends from north of the clearance point for the connecting track to the Three Rivers Railroad (former P&LE) at approximately milepost 46.75± to the end of the line at approximately milepost 51.3±.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 15, 1993 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 26, 1993.[3] Petitions to reopen or request for public use conditions under 49 CFR 1152.28 must be filed by September 7, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 20, 1993. Interested parties may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 3, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19645 Filed 8–13–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking as stay of the abandonment exemption on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1605–92]

Public Opinion Survey on the Potential Usage of Dedicated Commuter Lanes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice informs the public that the Immigration and Naturalization Service (the Service) will be conducting a public opinion survey periodically over the next twelve months at land border Ports-of-Entry, to determine whether there will be sufficient potential use by the public to warrant the opening of Dedicated Commuter Lands at selected sites. Dedicated Commuter Lanes will reduce traffic back-ups by speeding the inspection process of vehicular traffic without inhibiting the agency's mandate to prevent the illegal entry of both aliens and controlled substances into the United States.

DATES: The survey will begin August 16, 1993, through August 16, 1994. Responses to the survey are entirely voluntary.

FOR FURTHER INFORMATION CONTACT: Donna Kay Barnes, Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, Telephone (202) 514–3275.

SUPPLEMENTARY INFORMATION: The Service is presently expanding its Dedicated Commuter Lane process of land border inspection authorized under section 210 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1991, Public Law 101–515. Dedicated Commuter Lanes are vehicular traffic lanes through which a group of identified low-risk frequent border crossers, who have been prescreened and pre-authorized, transit the border. Individual participation in the Dedicated Commuter Land program by border crossers is voluntary. Individuals whose applications for participation in the program are denied are not precluded from applying for admission to the United States through the regular inspection lanes.

In order to acquire data needed to accurately estimate use levels at proposed expansion sites, or at sites suggested for expansion surveys of potential users of the program are invaluable. The information gathered from these surveys will assist the Service in preparing to implement the

Dedicated Commuter Land program, including providing for adequate staffing, controlling the application process, and assessing the need and public support for the program at locations where it may not be readily apparent.

NOTICE: The United States Immigration and Naturalization Service will be conducting public surveys periodically over the next twelve months to determine public opinion and potential use of Dedicated Commuter Lanes at certain land border Ports-of-Entry in the United States. Members of the public will be asked no more than five questions regarding their own border crossing habits as well as their personal opinions about the program. These questions may be asked as people are crossing the border, or in written form in various publications. Responses to these questions, both oral and written, are voluntary, and any person may choose not to participate in the survey. Questions shall be limited in content and format to the following:

1. How often do you cross the border?
2. Do you most frequently cross the border for: (1) Business, or (2) pleasure (including family visits or shopping)?
3. Would you use a Dedicated Commuter Lane if one were available at your usual border crossing?
4. Would you be willing to pay a fee for the use of this lane?
5. Would the availability of such a lane have an impact on how often you cross the border? If so, in what way?

Dated: August 5, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–19704 Filed 8–13–93; 8:45 am]

BILLING CODE 4410–10–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Corporation for Open Systems International

Notice is hereby given that, on March 31, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in COS. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: The Foxboro Company, Foxboro, MA; the U.S. General Services Administration, Washington, DC, and Booz-Allen & Hamilton, McLean, VA, became members of COS on January 4, 1993. Computer Sciences Corporation, Network Integration Division, Herndon, VA, became a member of COS on March 11, 1993. AEG; Amdahl Corporation; Bechtel Power Corporation; The Boeing Company; Central Intelligence Agency; Deere & Company; E.I. du Pont de Nemours & Company, Inc.; Eastman Kodak Company; Gsi Danet, Inc.; Hughes Aircraft Company; The National Computing Centre Limited; and the State of Texas Department of Information Resources, resigned from COS effective December 31, 1992. COS was advised that effective March 1, 1993, the name of the Air Force Communications Command, a member of COS, was changed to the Air Force Command, Control, Communications & Computer Agency.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986 (51 FR 21260).

The last notification was filed with the Department on December 24, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 4, 1993 (58 FR 7158).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19589 Filed 8–13–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; ADBAC Quat Joint Venture

Notice is hereby given that, on June 28, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Huntington Laboratories, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership of the ADBAC Quat Joint Venture ("the venture"). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, membership has been transferred from Sherex Chemical Company, Inc. to Witco Chemical Company, New York, NY.

No other changes have been made in either the membership or planned activity of the venture. Membership in this group research project remains open, and the parties to the venture intend to file additional written notification disclosing all changes in membership.

On September 8, 1986, the venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 7, 1986, 51 FR 35706.

The last notification was filed with the Department on November 11, 1986. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 16, 1986, 51 FR 45067.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19590 Filed 8–13–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Spray Drift Task Force

Notice is hereby given that, on July 20, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ICI Americas, Incorporated, Wilmington, DE, has changed its name to Zeneca, Incorporated and Platte Chemical Company, Greeley, CO has changed its name to Nufarm-Platte Party Limited.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Spray Drift Task Force intends to file written notification disclosing all changes in membership.

On May 15, 1990, the Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1990 (55 FR 27701).

The last notification was filed with the Department on January 13, 1993. A notice was published in the Federal

Register pursuant to section 6(b) of the Act on February 8, 1993 (58 FR 7582).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19591 Filed 8–13–93; 8:45 am]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 90-5]

Privacy Act of 1974; Current Systems of Records; Establishment of New Systems of Records

AGENCY: Copyright Office; Library of Congress.

ACTION: Notice of current systems of records and of establishment of new systems of records.

SUMMARY: The Copyright Office last reported on its systems of records under the Privacy Act of 1974 (5 U.S.C. 552a) at 51 FR 19625, on May 30, 1986. This publication of the Copyright Office systems of records reflects changes in the records maintained in the Office in light of (1) its new functions and duties under the Satellite Home Viewer Act of 1988, Pub. L. 100-667; (2) organizational changes in the Office; (3) changed procedures concerning the Mask Work Registration Files; and (4) enactment of the Berne Convention Implementation Act of 1988, Pub. L. 100-568.

The Satellite Home Viewer Act of 1988 added a new section 119 to the Copyright Act of 1976, effective January 1, 1989. For a six year period, the law establishes a statutory license for certain secondary transmissions made by satellite carriers to satellite "dish" owners for private home viewing. In accordance with the new section 119 the Office has established three types of public files including: (1) Network Name and Address File for Satellite Carrier Statutory License, (2) Satellite Carrier Voluntary Agreements File, and (3) Secondary Transmission by Satellite Carrier for Private Home Viewing: Statement of Account. The new files are designated CO-23, CO-24, and CO-25 respectively.

Prior to 1990, mask work recorded documents appear on separate reels of microfilm and are not interspersed with copyright related documents. Mask work documents recorded later are interspersed with copyright related documents rather than on separate reels. That change is reflected in CO-22, Mask Work Recorded Document Files.

The titles of several systems managers have been changed as well as one division name.

The Berne Union Implementation Act of 1988 amended section 407 of the Copyright Act governing mandatory deposit of copies for the use of the Library of Congress. A demand for deposit may now be made even if the copyrighted work is published in the United States without a notice of copyright. Entries for files CO-7 and CO-8 have been amended to delete references to publication with notice.

DATES: Comments should be received on or before September 15, 1993.

ADDRESSES: Interested persons should submit five copies of their written comments:

If by mail to: Office of General Counsel,
U.S. Copyright Office,
Library of Congress, Department 17,
Washington, DC 20540; or
By hand to: Office of General Counsel,
Copyright Office, Library of Congress,
James Madison Memorial Building,
LM 407,
1st and Independence Avenue, SE
Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540; (202) 707-8380. These systems of records will become effective September 15, 1993, unless the Copyright Office publishes notice to the contrary.

Dated: August 2, 1993

Ralph Oman,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

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CO-1

SYSTEM NAME:

Master Index Card Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Remitters of all cash received by the Office, and individuals who submit documents for recordation, whether or not accompanied by a remittance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of material and remittances received; records of final disposition of cases (in the form of registration numbers or identity of other fee services), the amount charged and/or the amount refunded, if any. Last cards produced September 14, 1985.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses this system: (1) To keep a record of the receipt and disbursement of all incoming cash; (2) to locate cases in-process before the permanent catalog record is available; and (3) to prepare refund vouchers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

4 x 6 index cards in file cabinets.

RETRIEVABILITY:

Alphabetically by remitter's name.

SAFEGUARDS:

These records are maintained in a room which is generally restricted to authorized personnel and locked during nonworking hours. Limited, provisional public access to these records is allowed from 10 a.m. to 11 a.m., Monday through Friday, except legal holidays.

RETENTION AND DISPOSAL:

Five years from September 14, 1985.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Mail and Correspondence Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Remitters or their authorized agents.

CO-2

SYSTEM NAME:

Copyright In-Process System (COINS).

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make fee service requests to the Office, including individuals who maintain deposit accounts.

CATEGORIES OF RECORDS IN THE SYSTEM:

If remittance received: Name of remitter, appropriate cross-references, title of work, amount received, amount used, class of application or fee service code, number of copies, nature of deposit code.

If deposit account: Name of deposit account holder, title of work, debit, credit notation, old balance, new balance, class of application or fee service code, number of copies, nature of deposit code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To record copyright fee charges, reconcile deposits of fees and generate accounting reports; (2) to create a record of receipt of all fee service requests; (3) to determine the status of recently submitted requests, including the registration number assigned; (4) to send periodic statements to deposit account holders of their transactions with the Office; (5) to notify deposit account holders that their accounts have become depleted.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records kept from November 1, 1977. All such records are on computer discs and tapes.

RETRIEVABILITY:

By name of remitter, title, deposit account holder, deposit account number, and transaction identification number.

SAFEGUARDS:

Records are stored on tapes and discs in a room which is restricted to authorized personnel and locked during nonworking hours. Computer access is by functional passwords which are restricted to personnel who require access to these records in the performance of their official duties.

RETENTION AND DISPOSAL:

The computerized system is used to store transactions for at least six months, at which time the record is transferred to microfilm for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Fiscal Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals who request fee services, including deposit account holders and Office charge sheets.

CO-3

SYSTEM NAME:

Copyright Claims Registration Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559; Landover Center Annex, 1701 Brightseat Road, Landover, MD. 20785; Washington National Records Center, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authors and other copyright owners, copyright claimants, applicants for registration or copyright renewal, or the authorized agents of such individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of copyright claimants; certified statements pertaining to authorship, creation, publication, and other registration related information; general correspondence pertaining to registration of claims to copyright.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports at the request of a member of the public; (2) to respond to requests by the public for information; (3) to correspond with applicants or otherwise process applications and related materials; (4) to monitor and control the flow of work in the Office; and (5) to establish and maintain a public record. It is the general policy of the Copyright Office to deny direct public inspection of in-

process application forms and correspondence, and any related material forming part of a pending application, except upon the request of the copyright claimant or his/her authorized representative. However, information about the material facts alleged in the application will be given to the public upon request. Once registration of a copyright claim has been completed or refused at the final agency level, the registration and correspondence records pertaining to that claim are open for public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila envelopes in file cabinets and on shelves; index cards in file cabinets; bound volumes and microform computer tapes and discs.

RETRIEVABILITY:

Registration number, cross-referenced by name of author, name of claimant, and title of work in the Copyright Card Catalog and post-1977 automated catalog files; alphabetically by author's pseudonym (prior to 1938) in Pseudonym Card File; on computer terminals by correspondence control number, remitter's name and any entered cross-references; in the case of physical files, by correspondence control number on a bar code label attached to each file.

SAFEGUARDS:

With the exception of the Copyright Card Catalog and post-1977 automated catalog files, these records are maintained in areas that are restricted to authorized personnel. All records in this system are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Renewals Section, Examining Division, Copyright Office, Library of Congress, Washington, DC 20559; Section Head, Mail and Correspondence Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559; Head, Records Management Section, and Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559; Section Head, Technical Support, Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Remitters or their authorized agents.

CO-4

SYSTEM NAME:

Miscellaneous Correspondence Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have: (1) Written to the Copyright Office for general information about copyright; or (2) request fee services such as search reports, copies of records or additional certificates of copyright registration.

CATEGORIES OF RECORDS IN THE SYSTEM:

General correspondence, including, where appropriate, the requester's name and action taken by the Office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407-410, 705, 706, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To maintain a record of correspondence with individuals who address inquiries to the Office and with individuals who request fee services; (2) to record the removal and return of documents in a file by Office personnel; and (3) to control and monitor the processing of requests.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila envelopes in file cabinets and on shelves, and, on occasion,

3 x 5 paper slips in a file cabinet.

RETRIEVABILITY:

Alphabetically by correspondent's name.

SAFEGUARDS:

These records are maintained in areas that are restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Some files are retained indefinitely, while others are only retained for 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Certification and Documents Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559; Section Head, Mail and Correspondence Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquires about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, or their authorized agent.

CO-5

SYSTEM NAME:

Recorded Documents files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are parties to, or have submitted for recordation, assignments, licenses, notices of termination of transfer, and other documents pertaining to a copyright; notices of error in the name in a copyright notice; authors of anonymous and pseudonymous works in instances where any person having an interest in the copyright in such a work submits a statement identifying one or more authors of the work; authors of works in instances where any person having an interest in the copyright in a particular work submits a statement of the death of the author or a statement that the author is still living on a particular date.

CATEGORIES OF RECORDS IN THE SYSTEM:

Assignments, licenses, notices of termination of transfer, wills, statements of abandonment of copyright, affidavits (such as a statement with respect to the authorship of a work), agreements or contracts, and other documents pertaining to copyright ownership, statements of identity of an anonymous or pseudonymous author, statements of the date of death of an author or that the author is still living on a particular date, and notices of error in the name in a copyright notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 203(a)(4), 205, 302, 304(c), 406(a)(2), 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records of recorded documents are open to public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays. In addition, the Office uses these records to compile an index to documents received for recordation. The index to documents received and recorded through 1977 is located in the Copyright Card Catalog. Since January 1, 1978, access to assignment documents recorded after 1977 is available in the automated document catalog file.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Prior to recordation, records are maintained in manila envelopes in file cabinets. Once recorded, original documents are microfilmed and returned to the remitter. Copies of copyright assignments and related documents received prior to 1954 are in bound volumes as well as on microfilm.

RETRIEVABILITY:

By the date the Office received the document and cross-referenced it in the Copyright Card Catalog or automated document catalog file by individual names and titles of works.

SAFEGUARDS:

Prior to recordation, documents and related materials are maintained in a room which is restricted to authorized personnel. All records are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Documents Unit, Technical Support Section, Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559; and Section Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, such individual's authorized agent, and other parties to the document recorded, or such parties' authorized agents, as well as individuals having an interest in the copyright in a work which is the subject of the document submitted for recordation.

CO-6

SYSTEM NAME:

Motion Picture Agreement Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Copyright depositors who have agreed to return to the Library one archival quality copy of any motion picture returned to the depositor if the Library of Congress requests such return within two years of the date of deposit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain the name and address of the depositor and the date on which the Motion Picture Agreement was executed by the Librarian of Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to determine if the Library of Congress has a Motion Picture Agreement with the depositor of a motion picture. If the Library has such an agreement, the copy of the motion picture submitted will be returned to the remitter if a written request has been made. In the absence of such an agreement, the Office will retain the copy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Upon receipt of these Agreements, the Copyright Acquisitions Division transcribes some of the information in the agreements onto 3 x 5 cards, copies of which are then sent to the Performing Arts Section of the Copyright Office Examining Division.

RETRIEVABILITY:

Alphabetically by depositor's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Copyright Acquisitions Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Depositors or their authorized agents.

CO-7

SYSTEM NAME:

Deposit Recordation File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, without simultaneously applying for copyright registration, have submitted deposit copies in accordance with the provisions of 17 U.S.C. 407.

CATEGORIES OF RECORDS IN THE SYSTEM:

Title of work, edition statement, imprint, collation, in notice statement, depositor, depositor's address, number of copies received, date received, and disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To keep a record of compliance with 17 U.S.C. 407; (2) to locate and correspond with those who have published works but who have not deposited the required copies; (3) to prepare weekly statistics on the number and nature of deposits received; and (4) to prepare search reports at the request of a member of the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

4 x 6 cards in the cabinet and visible file.

RETRIEVABILITY:

Alphabetically by depositor's name, author's name, and title of work.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Copyright Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Deposit copies submitted.

CO-8

SYSTEM NAME:

Compliance Activity File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

Individuals from whom the Office has demanded, in accordance with 17 U.S.C. 407, copies of works published in the United States. It also includes individuals whose works were found to be deposited in accordance with 17 U.S.C. 407 prior to a demand.

CATEGORIES OF RECORDS IN THE SYSTEM:

Author's name, title of work, publisher, copyright claimant, dates of initial and follow-up action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to avoid sending out duplicate correspondence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

4 x 6 index cards in a file cabinet.

RETRIEVABILITY:

Alphabetically by title and claimant's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Copyright Acquisitions Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Printed bibliographies, publishers' catalogs, citations provided by the Library of Congress, published citations of the work, and Office personnel who have personally observed the item cited.

CO-9

SYSTEM NAME:

Office Mailing Lists.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who had frequent contact with the Copyright Office, or had asked to receive all Office information circulars, announcements, and other printed material prepared by the Office. Attorneys who were listed in the annual edition of the "American Bar Association Section of Patent, Trademark, and Copyright Law Committees" as members of the copyright-related committees were also included.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 707.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office used these records to address and mail Office information circulars, announcements and other printed material. This file has been inactive since 1985. Mailings are no longer made by the Copyright Office using this file.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer print-out sheets in a binder, stored in a desk drawer.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Individuals may request that their names be dropped from the list. No new names are being added to the list.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Publications Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, Copyright Office records, trade reference sources, and annual edition of "American Bar Association Section of Patent Trademark and Copyright Law Committee."

CO-10

SYSTEM NAME:

Freedom of Information Act and Privacy Act Requests and Disclosures File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted Freedom of Information Act and/or Privacy Act requests in accordance with 37 CFR parts 203 and 204.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests submitted under the Freedom of Information Act and/or Privacy Act; requests submitted under the Privacy Act for correction or amendment of Office records; and copies of the Office response to these requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 701.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To maintain an accounting of Freedom of Information Act and/or Privacy Act requests and Office responses to these requests; (2) to maintain an accounting of requests submitted under the Privacy Act to correct or amend a record pertaining to an individual and the Office responses to these requests; (3) to compile the annual report required by the Freedom of Information Act; and (4) to review and compile the annual report required by the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet.

RETRIEVABILITY:

Alphabetically by requester's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, and Copyright Office records.

CO-11

SYSTEM NAME:

Address File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Copyright claimants of record whose address has been requested by a member of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of claimant of record, year date of address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to facilitate searching for addresses of copyright claimants when such addresses are requested by a member of the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3 x 5 index cards in file drawer.

RETRIEVABILITY:

Alphabetically by claimant of record's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and is locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely; however, obsolete addresses are disposed of as more current addresses are obtained.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Copyright claimants, their authorized agents, phone books, and city directories.

CO-12

SYSTEM NAME:

Bibliographic File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Well-known or prolific authors or authors of well-known works, in those instances where the Office determines that it would be in the public interest to preserve published copyright-related information about such authors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Newspaper clippings, magazine articles, obituaries, book jackets and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) in the compilation of an index to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Folders in file cabinets.

RETRIEVABILITY:

Alphabetically by author's name, law firm's name, or title of work.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Magazines, newspapers, book jackets, trade reference sources, Copyright Card Catalog, applications and other materials.

CO-13

SYSTEM NAME:

Secondary Transmissions by Cable Systems: Initial Notice of Identity and Changes File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cable system owners who submit notices of identity for recordation in the Copyright Office, notices of ownership or control change, or notices of change in the signal carriage complement of cable systems from 1977 to August 27, 1986. The records are now dormant, nothing is being added or deleted.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statement of identity and address of the person who owns the secondary transmission service, name and location of the primary transmitter or transmitters whose signals are regularly carried, changes in any of the preceding categories, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111(d)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) in the preparation of internal statistical reports; and (3) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in locked file cabinet and microfilm (microjackets).

RETRIEVABILITY:

Alphabetically by legal name of the owner of the cable system.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-14

SYSTEM NAME:

Secondary Transmissions by Cable Systems: Statements of Account.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners of cable systems who file this, semi-annual statement of accounts required by 17 U.S.C. 111(d)(2).

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal names and addresses of owners of cable systems, call signs and locations of primary transmitters and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111(d)(2).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record; and (3) in the preparation of statements of account which the Copyright Office must submit to the Copyright Royalty Tribunal as required by 17 U.S.C. 111(d)(2).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and, after three years, microfilm.

RETRIEVABILITY:

Alphabetically by legal name of the owner of the cable system, grouped according to accounting period and year.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-15

SYSTEM NAME:

Cable System Videotape Transfer Contracts File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom a cable system has transferred a videotape of a program nonsimultaneously transmitted by it pursuant to a written, nonprofit contract providing for the equitable sharing of costs of such videotape and its transfer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Transferor, transferee, title, date contract effective, date of recordation, location of cable system, notation of acknowledgement of receipt by the Copyright Office, related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111(e)(2)(A).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in file cabinet and on microfilm.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Parties to the transfer contracts or such parties' authorized agents.

CO-16

SYSTEM NAME:

Notice of Intention to Obtain Compulsory License for Making and Distributing Phonorecords Embodying Nondramatic Musical Works File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who file a notice of their intention to obtain a compulsory license for making and distributing phonorecords embodying nondramatic musical works.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, name of copyright owner, titles, date of recordation of notice, internal notation of date upon which the Office informally acknowledged receipt of the notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 115(b)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record; and (3) in the preparation of internal statistical reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in file cabinet.

RETRIEVABILITY:

Alphabetically by name of remitter and name of copyright owner.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-17

SYSTEM NAME:

Jukebox License Applications.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Jukebox operators who have applied for, and been issued, a jukebox license from 1978 to 1989. The records are now dormant, nothing is being added or deleted.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of operator, manufacturer, serial number or model number, model name, model year, charge per play, capacity, type of sound, person to be contacted for further information, number of jukeboxes, amount of remittance, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 116(b)(1)(A).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record; and (3) in the preparation of internal statistical and accounting reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and, after three years, microfilm.

RETRIEVABILITY:

Alphabetically by name of owner, grouped by year.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division,

Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-18

SYSTEM NAME:

Voluntary Licensing Agreements File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit for recordation voluntary licensing agreements between: (1) Copyright owners of published nondramatic musical works and published pictorial, graphic, and sculptural works and public broadcasting entities; and (2) copyright owners of nondramatic literary works and public broadcasting entities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of actual agreements submitted for recordation, copies of registration certificates of record, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 118(b)(2) and (e)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) in the preparation of internal statistical reports; and (3) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and on microfilm.

RETRIEVABILITY:

Alphabetically by names of copyright owners and public broadcasting entities.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Parties to voluntary licensing agreements or such parties' authorized agents.

CO-19

SYSTEM NAME:

Licensing Division Correspondence File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who send letters of transmittal and other incidental Licensing Division correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

General correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111, 115, 116, 118, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to maintain a record of incidental correspondence with the Licensing Division.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in file cabinet.

RETRIEVABILITY:

Alphabetically by correspondent's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are kept in the open file until a reply is received or until the case is closed. Records in the closed file are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-20

SYSTEM NAME:

Secondary Transmissions by Cable Systems: Correspondence Files.

SYSTEM LOCATION:

Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cable systems owners and other individuals who correspond with the Licensing Division, the Copyright Office General Counsel or the Register of Copyrights concerning the administration of the cable compulsory licensing system in section 111 of title 17 U.S.C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office maintains these records to facilitate public access to correspondence of the Licensing Division, Copyright Office General Counsel and the Register of Copyrights on the administration of the section 111 compulsory licensing system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and binders.

RETRIEVABILITY:

Correspondence usually accessible by date letter sent to member of public.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Licensing Division personnel, the Copyright Office General Counsel and the Register of Copyrights.

CO-21

SYSTEM NAME:

Mask Work Registration Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mask work owners, applicants for mask work registration, or the authorized agents of such individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of mask work owners; certified statements pertaining to creation, commercial exploitation, ownership, and other registration-related information; general correspondence pertaining to registration of mask work claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 908(b), 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports at the request of a member of the public; (2) to respond to requests by the public for information; (3) to correspond with applicants or otherwise process applications and related materials; (4) to monitor and control the flow of work in the Office; and (5) to establish and maintain a public record. It is the general policy of the Copyright Office to deny direct public inspection of in-process application forms and correspondence, and any related material forming part of a pending application, except upon the request of the mask work owner or his/her authorized representative. However, information about the material facts alleged in the application will be given to the public upon request. Once registration of a claim to mask work protection has been completed or refused at the final agency level, the registration and correspondence records pertaining to that claim are open for public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila envelopes in file cabinets and on shelves; computer tapes and discs; and microform.

RETRIEVABILITY:

Registration number, cross-referenced by name of owner and title of work in the automated or microform catalog files; by correspondence control number, applicant's name, title of work, and any entered cross-references in the automated correspondence management system; by fee service number, applicant's name, title of work, and any entered cross-references in the automated receipts in-process system; in the case of physical files, by correspondence control number on a bar code label attached to each file, for in-process files, and by applicant's name for closed correspondence files.

SAFEGUARDS:

Automated records are available at computer terminals located throughout the Library of Congress. Physical records are maintained in areas that are restricted to authorized personnel. All records in this system are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Mask Work Unit, Examining Division, Department MW, Library of Congress, Washington, DC 20540.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Applicants or their authorized agents.

CO-22

SYSTEM NAME:

Mask Work Recorded Documents Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are parties to, or have submitted for recordation, assignments, licenses, and other documents pertaining to a mask work.

CATEGORIES OF RECORDS IN THE SYSTEM:

Assignments, licenses, wills, agreements or contracts, and other documents pertaining to mask works.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 908(b), 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Records of recorded documents are open to public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays. In addition, the Office uses these records to compile an index to recorded documents, which is interfiled in the automated catalog files.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Prior to recordation, records are maintained in manila envelopes in file cabinets. Once recorded, original documents are microfilmed and returned to the applicant. Mask work documents appear on microfilm. Mask work documents recorded prior to 1990 appear on separate reel(s) of microfilm; they are not interspersed with copyright related documents.

RETRIEVABILITY:

Before recordation, by date the Office received the document; after recordation, cross-referenced in the automated catalog files by names of parties and titles of works.

SAFEGUARDS:

Prior to recordation, documents and related materials are maintained in a room which is restricted to authorized personnel. Automated records are available at computer terminals located throughout the Library of Congress. All records are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Documents Unit, Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, such individual's authorized agent, and other parties named in the document recorded, or such parties' authorized agents, as well as individuals having an interest in the mask work which is the subject of the document submitted for recordation.

CO-23

SYSTEM NAME:

Network Name and Address File for Satellite Carrier Statutory License.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Television networks and individuals to whom a satellite carrier files a list identifying all subscribers to which the satellite carrier makes secondary transmissions of that network's primary transmission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of the television network, the contact person, a full mailing address, phone number and related information required by 17 U.S.C. 119(a)(2)(C).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 119(a)(2)(C).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet.

RETRIEVABILITY:

Alphabetically by legal name of the network owner.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURES:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedures."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains or such individual's authorized agent.

CO-24

SYSTEM NAME:

Satellite Carrier Voluntary Agreements File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Satellite Carriers, Distributors and Copyright Owners.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of actual agreements submitted, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 119(c)(2)(C).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet.

RETRIEVABILITY:

Alphabetically by legal name of the owner of the satellite carrier, distributor, and copyright owner.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURES:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains or such individual's authorized agent.

CO-25

SYSTEM NAME:

Secondary Transmission by Satellite Carrier for Private Home Viewing: Statement of Account.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners of satellite carriers who file semi-annual statements of account required by 17 U.S.C. 119(b)(1).

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal names and addresses of owners of satellite carriers, call signs and locations of primary transmitters and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 119(b)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; (2) to establish and maintain a public record; and (3) in the preparation of internal statistical and accounting reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and, after three years, microfilm.

RETRIEVABILITY:

Alphabetically by legal name of the owner of the satellite carrier, grouped according to accounting period and year.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURES:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains or such individual's authorized agent.

[FR Doc. 93–19587 Filed 8–13–93; 8:45 am]
BILLING CODE 1410–07–F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–065]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Materials and Structures

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on materials and structures.

DATES: August 31, 1993, 8:30 a.m. to 5 p.m.; and September 1, 1993, 8 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, room 124, Building 1229, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Blankenship, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 804/864–6005.

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:

—Advanced Subsonic Initiatives
—High Speed Research Initiatives
—Selected Critical Technology Programs

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 10, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93–19628 Filed 8–13–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–32240, License No. 11–27085–01, EA 93–082]

Twin Falls Clinic & Hospital, Twin Falls, Idaho; Order Imposing Civil Monetary Penalty

I

Twin Falls Clinic & Hospital (Licensee) is the holder of NRC License No. 11–27085–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on September 30, 1992. The license authorizes the Licensee to use various radioisotopes in accordance with the conditions specified therein. The license is due to expire on October 31, 1996.

II

An inspection of the Licensee's activities was conducted during March 17–18, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 20, 1993. The Notice states the nature of the violation, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice dated May 21, 1993. In its response, the Licensee admitted the violation which resulted in the proposed civil penalty, but requested mitigation for reasons that are summarized in the Appendix to this Order.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered That:* The Licensee pay a civil penalty in the amount of $5,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing," and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be: Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 6th day of August 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluation and Conclusion

On May 20, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. Twin Falls Clinic & Hospital responded to the Notice on May 21, 1993. The Licensee admitted the violation that resulted in the proposed civil penalty, but requested mitigation. The NRC's evaluation and conclusion regarding the Licensee's request are as follows:

Restatement of Violation

10 CFR 35.32(a), which became effective January 27, 1992, states, in part, that each licensee under this part, as applicable, shall establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user. The quality management program must include written policies and procedures to meet specific objectives for, among other things, any administration of quantities greater than 30 microcuries of I–131.

Contrary to the above, between November 17, 1992, and March 15, 1993, the licensee administered I–131 to 14 patients in quantities greater than 30 microcuries and did not establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material would be administered as directed by the authorized user.

This is a Severity Level III violation (Supplement VI).

Civil Penalty—$5,000

Summary of Licensee's Request for Mitigation

In its May 21, 1993, letter, the Licensee admitted the above violation but requested mitigation of the penalty, citing the following reasons:

1. During a "licensing inspection" of the facility on January 14, 1992, less than two weeks before the QMP was to be submitted, the inspector endorsed the activities of Twin Falls Clinic & Hospital (TFC&H). No mention of 10 CFR 35.32(a) was made by the inspector, thus giving TFC&H a false impression of compliance with all NRC regulations.

2. TFC&H took immediate action to establish a written QMP upon discovery of the violation, and now requires the Radiation Safety Committee to review documentation from NRC to ensure that the Nuclear Medicine Department remains in compliance with changing requirements.

3. NRC Inspection Report 030–32240/93–01 identifies this violation as a level IV which would carry no associated penalty.

NRC Evaluation of Licensee's Request for Mitigation

The NRC's evaluation of the Licensee's arguments for mitigation is as follows:

1. The NRC has no record of any NRC inspection of TFC&H around the January 14,

1992 timeframe, and NRC cannot confirm TFC&H's assertion that NRC inspected TFC&H on January 14, 1992. The Licensee may be confused because the NRC issued a byproduct material license to TFC&H on January 14, 1992. In any event, TFC&H is responsible for ensuring that it is familiar with and complies with all NRC requirements applicable to their licensed activities, including the requirement to establish and maintain a written QMP.

2. The Enforcement Policy provides for up to 50 percent mitigation for prompt and extensive corrective action. Licensees are expected and required to take corrective actions for violations. The NRC gave TFC&H credit for its corrective actions in the May 20, 1993 Notice. As the letter transmitting the Notice indicated on Page 2 and 3, the penalty was decreased by 50 percent of the base value "* * * because TFC&H took immediate corrective action and action to prevent a recurrence of the violation."

3. The NRC has reviewed Inspection Report 030–32240/93–01 and is unable to find any reference to this violation of 10 CFR 35.32(a) being classified at Severity Level IV. Four additional violations were found during the inspection and were cited at Severity Level IV in a Notice of Violation issued with the inspection report. However, they were unrelated to the violation of 10 CFR 35.32(a) that was the subject of the enforcement conference and the basis for the civil penalty. The NRC has classified the violation at Severity Level III in accordance with the Enforcement Policy, Supplement VI, C.6. In this case, the example given for a Severity Level III violation is a substantial failure to implement the QMP as required by 10 CFR 35.32. TFC&H had no written QMP or procedures established to meet the objectives and requirements of 10 CFR 35.32.

NRC Conclusion

The NRC has concluded that the licensee has not provided any information that would give the NRC a basis for considering a reduction in the size of the proposed civil penalty. Consequently, the proposed civil penalty in the amount of $5,000 should be imposed.

[FR Doc. 93–19632 Filed 8–13–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1993.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of seven rescission proposals and 12 deferrals contained in six special messages for FY 1993. These messages were transmitted to Congress on October 1, and December 30, 1992, and on February 26, March 16, April 20, and June 4, 1993.

Rescissions (Attachments A and C)

As of August 1, 1993, seven rescission proposals totaling $356.0 million had been transmitted to the Congress. The funds associated with these proposed rescissions were never withheld from obligation. Congress approved five of the Administration's rescission proposals in Public Law 103–50, the Supplemental Appropriations Act of 1993, which was signed into law on July 2, 1993. A total of $243.0 million was rescinded by that measure. Attachment C shows the status of the FY 1993 rescission proposals.

Deferrals (Attachments B and D)

As of August 1, 1993, $3,111.1 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1993.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

57 FR 46730, Friday, October 9, 1992

58 FR 3368, Friday, January 8, 1993

58 FR 16324, Thursday, March 25, 1993

58 FR 17298, Thursday, April 1, 1993

58 FR 27192, Thursday, May 6, 1993

58 FR 33164, Tuesday, June 15, 1993

Leon E. Panetta,

Director.

ATTACHMENT A.—STATUS OF FY 1993 RESCISSIONS

[In millions of dollars]

	Amounts
Rescissions proposed by the President (funding never withheld)	356.0
Rejected by the Congress	−113.0
Amount rescinded by the Supplemental Appropriations Act	−243.0
Currently before the Congress	0

ATTACHMENT B.—STATUS OF FY 1993 DEFERRALS

[In millions of dollars]

	Amounts
Deferrals proposed by the President	4,467.5
Routine Executive releases through August 1, 1993 (OMB/Agency releases of $1,358.5 million partially offset by cumulative positive adjustments of $2.1 million)	−1,356.4
Overturned by the Congress	
Currently before the Congress	3,111.1

ATTACHMENT C.—STATUS OF FY 1993 RESCISSION PROPOSALS—AS OF AUGUST 1, 1993

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Amount previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Department of Housing and Urban Development								
Housing programs:								
Annual contributions for assisted housing.	R93–2	13,000	.....	6–4–93	(*)	.....	.....	

ATTACHMENT C.—STATUS OF FY 1993 RESCISSION PROPOSALS—AS OF AUGUST 1, 1993—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Amount previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Homeownership and opportunity for people everywhere grants.	R93–3	100,000	.....	6–4–93	(*)	.....	.....	
Department of Justice								
Legal activities: Assets forfeiture fund.	R93–4	20,000	.....	6–4–93	(*)	.....	20,000	P.L. 103–50
Department of Transportation								
Federal Aviation Administration:								
Operations	R93–5	3,100	.....	6–4–93	(*)	.....	3,100	P.L. 103–50
Grants-in-aid for airports.	R93–6	36,750	.....	6–4–93	(*)	.....	36,750	P.L. 103–50
Coast Guard: Operating expenses.	R93–7	3,150	.....	6–4–93	(*)	.....	3,150	P.L. 103–50
Independent Agencies								
Board for International Broadcasting: Israel relay station.	R93–1	.....	180,000	4–20–93	(*)	.....	180,000	P.L. 103–50
Total rescissions.		176,000	180,000		0		243,000	

*Funds were never withheld from obligation.

ATTACHMENT D.—STATUS OF FY 1993 DEFERRALS—AS OF AUGUST 1, 1993

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments (+)	Amount deferred as of 9–1–93
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Department of Health and Human Services									
Social Security Administration:									
Limitation on administrative expenses	D93–6	7,267	.....	10–1–92	.....	.....	.....	.....	.....
	D93–6A	.....	50	4–20–93	.....	.....	.....	.....	7,317
Department of State									
Bureau for Refugee Programs:									
United States emergency refugee and migration assistance fund.	D93–7	10,123	.....	10–1–92	.....	.....	.....	.....	.....
	D93–7A	.....	47,761	12–30–92	37,000	.....	.....	.....	20,884
Total, Deferrals		2,921,080	1,546,428	.....	1,358,509	0	.....	2,103	3,111,102

ATTACHMENT D.—STATUS OF FY 1993 DEFERRALS—AS OF AUGUST 1, 1993

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments (+)	Amount deferred as of 8–1–93
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Funds Appropriated to the President									
International Security Assistance:									
Economic support fund	D93–1	492,736	.....	10–1–92	.....	.....	.....	.....	.....
	D93–1A	.....	1,492,774	12–30–92	860,572	.....	.....	2,103	1,127,042
Foreign military financing grants	D93–8	1,487,000	.....	12–30–92	130,550	.....	.....	.....	1,356,450
Foreign military financing program	D93–9	149,200	.....	12–30–92	141,946	.....	.....	.....	7,254
Agency for International Development:									
Demoblization and transition fund	D93–2	13,750	.....	10–1–92	5,750	.....	.....	.....	8,000
International disaster assistance, executive	D93–10	63,823	.....	2–26–93	61,397	.....	.....	.....	2,426
Sub-Saharan Africa disaster assistance, executive	D93–11	67,188	.....	2–26–93	67,188	.....	.....	.....	0
Department of Agriculture									
Forest Service:									
Cooperative work	D93–3	364,582	.....	10–1–92	33,151	.....	.....	.....	331,431
Expenses, brush disposal	D93–4	40,241	.....	10–1–92	.....	.....	.....	.....	.....
	D93–4A	.....	5,835	12–30–92	.....	.....	.....	.....	.....
	D93–4B	.....	8	3–16–93	.....	.....	.....	.....	46,084
Timber salvage sales	D93–12	222,994	.....	2–26–93	20,000	.....	.....	.....	202,994
Department of Defense—Civil									
Wildlife Conservation, Military Reservations:									
Wildlife conservation, Defense	D93–5	2,175	.....	10–1–92	955	.....	.....	.....	1,220

[FR Doc. 93–19597 Filed 8-13–93; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32726; File No. SR–Amex–93–24]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc., Relating to a Pilot Program for Execution of Odd-Lot Market Orders

August 9, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes that the Commission extend for six months the Exchange's existing pilot program under Amex Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charged.[1] The Exchange received approval, on a pilot basis expiring on August 8, 1993, of amendments to Amex Rule 205.[2]

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved, on a pilot basis extending to August 8, 1993, amendments to Exchange Rule 205 to require the execution of odd-lot market orders at the prevailing Amex quote with no odd-lot differential. These procedures initially were approved by the Commission on a pilot basis,[3] and subsequently were extended six times.[4]

Under the pilot procedures, odd-lot market orders with no qualifying notations are executed at the Amex quotation at the time the order is represented in the market, either by being received at the trading post or through the Exchange's Post Execution Reporting ("PER") System. Enhancements to the PER system have been implemented to provide for the automatic execution of odd-lot market orders entered through PER. For purposes of the pilot program, odd-lot limit orders that are immediately executable based on the Amex quote at the time the order is received, at the trading post or through PER, are executed in the same manner as odd-lot market orders.

The Exchange proposes that the pilot program applicable to odd-lot execution procedures be extended for six months. This will provide the Commission with an additional period of time to assess procedures under the pilot program and will permit the Exchange to provide additional data and information regarding its experience under the pilot program.

2. Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of Sections 6(b)(5) and 11A(a)(1) in particular in that it facilitates the economically efficient execution of odd-lot transactions, and is intended to result in improved execution of customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–93–24 and should be submitted by September 7, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Sections 6[5] and 11A(a)(1)[6] of the Act and the rules and regulations thereunder. The Commission believes that the revised procedures, which provide for pricing of odd-lot market orders at the prevailing

[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which expired on August 8, 1993, to continue without interruption.

[2] See Securities Exchange Act Release No. 31828 (February 5, 1993), 58 FR 8434 (February 12, 1993) (approving File No. SR–Amex–93–06).

[3] See Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (approving File No. SR–Amex–88–23).

[4] See Securities Exchange Act Release Nos. 31828 (February 5, 1993) 58 FR 8434 (February 12, 1993) (approving File No. SR–Amex–93–06); 30305 (January 30, 1992), 57 FR 4653 (approving File No. SR–Amex–92–04); 29922 (November 8, 1991), 56 FR 58409 (approving File No. SR–Amex–91–30); 29186 (May 9, 1991), 56 FR 22488 (approving File No. SR–Amex–91–09); 28758 (January 10, 1991), 56 FR 1656 (approving File No. SR–Amex–90–39); and 27590 (January 5, 1990), 55 FR 1123 (approving File No. SR–Amex–89–31).

[5] 15 U.S.C. 78f (1988).

[6] 15 U.S.C. 78k–1(a)(1) (1988).

market quote rather than at the execution price of a subsequent transaction, should provide investors with more timely execution of these orders. Moreover, these orders should receive less costly executions than under the former procedures because no differential will be charged. In addition, the Exchange has implemented enhancements to its PER system for the automatic execution of odd-lot market orders, as set forth in the Commission's order approving the use of the pilot program procedures.[7]

In its previous orders,[8] the Commission asked the Amex to analyze the difference in executions between using the Intermarket Trading System ("ITS") consolidated best bid or offer as compared with the Amex quote without the differential. Specifically, the Commission expressed interest in whether customers are receiving the best execution, both in terms of price and time, using the new Amex system. The Commission was also interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential.

In response, the Amex submitted the requested information with respect to the difference in executions between the ITS best bid or offer and the Amex quote to the Commission on January 9, 1991, April 22, 1991, October 25, 1991, February 4, 1993 and August 3, 1993.[9] The Amex data indicated that the pilot procedures provide a superior execution for a substantial majority of odd-lot executions. Accordingly, the Commission believes that it is reasonable to extend the pilot for an additional six months to enable the Commission to review fully the Amex reports and to enable the pilot to continue without interruption during the Commission's review. The Commission, however, remains concerned that some odd-lot orders could receive executions at less than the best available price since the Exchange's pricing formula does not include quotations from other markets.[10] Nevertheless, due to the relatively low number of odd-lot market orders,[11] the percentage of Amex quotes that are worse than the ITS best bid or offer, and the benefits to customers under the pilot program procedures as compared to the former pricing procedures, the Commission believes that it is acceptable to continue the pilot's current pricing procedures for an additional six months. During that period, the Commission requests that the Exchange continue to monitor the pilot and provide data on the number of Amex quotes executed that are worse than the ITS consolidated best bid and offer and on the number of odd-lots as a percentage of total Exchange volume. Moreover, the Commission remains interested in the Amex reporting on the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential. The Commission requests that the Amex submit a report on these matters by November 8, 1993. The Commission expects that any request for another extension of the pilot program or for permanent approval of the pilot procedures will be submitted to the Commission, pursuant to Rule 19b–4 under the Act, by November 8, 1993.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[12]

It is therefore ordered, pursuant to Section 19(b)(2)[13] of the Act, that the proposed rule change (SR–Amex–93–24) is approved for a six month period ending on February 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19693 Filed 8–13–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32728; File No. SR–NSCC–93–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to NSCC's Clearing Fund

August 10, 1993.

On January 6, 1993, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR–NSCC–93–01) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 17, 1993, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposed rule change modifies NSCC's rules by: (1) Eliminating the right of clearing members to use municipal securities to collateralize their clearing fund indebtedness and (2) imposing more specific standards for NSCC's retention of clearing fund deposits upon the retirement of a member.

A. Elimination of Municipal Securities as an Acceptable Form of Clearing Fund Collateralization

NSCC's rules currently permit members to collateralize their clearing fund indebtedness with United States Treasury securities, municipal securities, and letters of credit.[3] Under certain circumstances, NSCC's rules allow NSCC to pledge clearing fund collateral for liquidity purposes.[4] Municipal securities, however, are generally less marketable than U.S. Treasury securities, and consequently, banks tend to give less value to municipal securities pledged as collateral for loans than they give to U.S. Treasury securities.[5] Because of

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[7] See Securities Exchange Act Release No. 26445, *supra* note 3, for a description of the Exchange's odd-lot procedures and the Commission's rationale for approving those procedures on a pilot basis. The discussion in the aforementioned order is incorporated by reference into this order.

[8] See *supra* note 4.

[9] See letter from Arne G. Michelson, Senior Vice President, Total Quality-Floor Members, Amex, to Sharon M. Lawson, Assistant Director, Division of Market Regulation, SEC, dated August 3, 1993; letter from Michael Cavalier, Assistant General Counsel, Regulatory, Legal & Regulatory Policy Division, Amex, to Diana Luka-Hopson, Branch, Chief, Division of Market Regulation, SEC, dated February 3, 1993; letters from Jules L. Winters, Executive Vice President, Operations, Amex, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated January 8, 1991, April 19, 1991 and October 23, 1991.

[10] The Commission has approved amendments to the New York Stock Exchange's ("NYSE") rules which incorporate the ITS quote into the NYSE odd-lot pricing procedures through the use of the "Best Pricing Quote." See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19409 (May 9, 1990) (File No. SR–NYSE–90–06).

[11] See footnote 9 of Securities Exchange Act Release No. 29922 (November 8, 1991), 56 FR 58409.

[12] No comments were received in connection with the proposed rule change which implemented these procedures. See supra note 3.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31983 (March 11, 1993), 58 FR 14456.

[3] NSCC Rule 4, Section 1. NSCC Rules and Procedures (Rev. September 24, 1992).

[4] *Id.*, NSCC Rule 4, Section 12.

[5] Several reasons exist for this difference in collateral value of municipals versus U.S. Treasuries. Among others, these reasons include: (1) municipal securities issues are often small, local

Continued

this, NSCC believes that permitting members to collateralize their clearing fund indebtedness with municipal securities unnecessarily restricts its liquidity resources. Therefore, NSCC's management has determined that, in order to maximize NSCC's resources, members should no longer be permitted to pledge municipal securities to collateralize their clearing fund indebtedness.

Accordingly, NSCC is amending Section 1 of NSCC Rule 4 (Clearing Fund) to eliminate municipal securities as an acceptable form of clearing fund collateral. NSCC will give members who currently use municipal securities as collateral six months to replace the municipal securities with other acceptable forms of collateral (*i.e.*, United States Treasury securities and letters of credit).

B. Retention of Clearing Fund Deposits of Retired Members

NSCC also is amending Section 6 of NSCC Rule 4 (Clearing Fund) to provide more definitive standards for the retention of clearing fund deposits after a member withdraws from the clearing corporation.[6] Currently, NSCC members who retire either provide an acceptable guarantee to NSCC or have their clearing fund deposits retained until all open transactions have been closed and all obligations to NSCC have been satisfied.

NSCC states that members with short positions in its continuous net settlement system are debited for dividend payments, both cash and securities, on payable date. Members with long positions are credited with corresponding amounts. Occasionally, an issuer will fail to disseminate dividend information in a timely manner. When these announcements ultimately are made, the appropriate debits are charged back to the members that had short positions on the date the dividend amounts should have been debited. Even if a member has retired, NSCC has the right to collect the dividend from the member because the dividend was an obligation for which the member was responsible while still a member. By retaining clearing fund deposits or obtaining a guarantee from retiring members, NSCC minimizes the risk of not being able to collect from retired members dividend payments arising from late dividend announcements and other obligations which mature or arise after retirement.

Based on its experience with aged dividend claims, NSCC believes that, in the absence of an acceptable guarantee, it is appropriate to retain a portion of the clearing fund deposits of retiring members for a specific period of time. Accordingly, NSCC rules set forth its right to retain the greater of: (i) 25% of the retiring member's average clearing fund requirement over the previous twelve months or (ii) $100,000. For members with clearing fund deposits of less than $100,000, NSCC will retain the entire deposit.

NSCC believes it is appropriate to withhold clearing fund deposits for different lengths of time depending on the type of account a clearing member maintains. For a member that has a direct account at a qualified securities depository ("QSD"), NSCC will retain that member's clearing fund deposit for a period of two years after the member ceases to be a member, all open transactions have been closed, and all obligations to NSCC have been fulfilled.[7] For a member that has a sponsored account at a QSD, NSCC faces an additional exposure from claims due to bad deposits made by the member prior to the member's retirement.[8] To protect itself from this risk as well as from the risk of late dividend announcements, in the absence of an acceptable guarantee, NSCC will retain the clearing fund deposit of a member that has a sponsored account at a QSD for a period of four years after the member withdraws from the clearing corporation, all open transactions have been closed, and all obligations to NSCC have been fulfilled.[9]

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[10] Sections 17A(b)(3) (A) and (F) of the Act require that clearing agencies be organized and their rules designed to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible.[11]

The Commission agrees that eliminating the use of municipal securities should increase the liquidity of the NSCC clearing fund. Because municipal securities tend to be less marketable and to have less loan value than other clearing fund collateral, NSCC's ability to obtain necessary financing by pledging these to a bank in the event of a default by one or more clearing members could be impaired. Moreover, because NSCC is unable to determine the exact loan value of municipal securities, estimates of its aggregate clearing fund are necessarily skewed. Eliminating municipals will help ensure that the clearing fund is a ready pool of liquid assets available to NSCC in the event of a market emergency.

Regarding the proposed periods of retention and standards for the amount of clearing fund deposits to be retained, the Commission agrees that NSCC's codification and implementation of such practices, which are similar to those already being used at DTC, should reduce the risk that NSCC will suffer a loss due to late dividend announcements or other obligations that mature or arise after the member withdraws from the clearing corporation. Thus, the Commission believes that the proposed rule changes will enable NSCC to effectively manage its risk consistent with its responsibilities under the Act.

The Commission notes that no comments were received on the proposed rule change. The Commission further believes that improved safety to NSCC and to the system outweighs any inconvenience that might accrue to retiring NSCC members.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly with those of section 17A of the Act, and the rules and regulations thereunder.

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issues with a thin trading market whereas Treasuries are readily marketable with minimal price variations and (2) the ratings provided by statistical firms, such as Standard and Poor's and Moody's, on coupon risk (*i.e.*, risk of timely payment of interest and principal) will vary greatly for different municipal issues whereas Treasuries have no coupon risk.

[6] Pursuant to NSCC Rule 4, Sec. 2, clearing members are entitled to any interest earned on clearing fund deposits. Similarly, after a member withdraws from NSCC, it will be entitled to any interest earned on retained clearing fund deposits. Telephone conversation between Karen L. Saperstein, Director of Legal and Associate General Counsel, NSCC, and Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (July 19, 1993).

[7] A QSD is a registered clearing agency that has entered into an agreement with NSCC pursuant to which the QSD will act as a securities depository for NSCC and will effect book-entry transfers of securities to and from NSCC with respect to the continuous net settlement system. Rule 1, NSCC Rules and Procedures (Rev. September 24, 1992).

[8] For a member that chooses not to maintain direct membership in a QSD, NSCC makes QSD facilities available through the use of a sponsored account. Each sponsored account is assigned a QSD account number by NSCC, and the member is permitted to use that account as if it were a direct depository participant. Procedure IX.B., NSCC Rules and Procedures (Rev. September 24, 1992).

[9] Similarly, in the absence of an acceptable guarantee, The Depository Trust Company ("DTC"), a QSD, has the right to retain any retiring DTC member's deposit to DTC's participants fund for a period of four years. Rule 4, § 6, DTC Rules (rev. August 1991).

[10] 15 U.S.C. 78q-1 (1988).

[11] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the above-mentioned proposed rule change (File No. SR–NSCC–93–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19694 Filed 8–13–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Southwestern Property Trust, Inc., Common Stock, $0.01 Par Value; 8% Convertible Debentures Due 2003) File No. 1–11224

August 10, 1993.

Southwestern Property Trust, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock and debentures are listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock and debentures commenced trading on the NYSE at the opening of business on July 28, 1993 and concurrently therewith such stock and debentures were suspended from trading on the Amex.

In making the decision to withdraw its common stock and debentures from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock and debentures on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and debentures and believes that dual listing would fragment the market for its securities.

Any interested person may, on or before August 31, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–19695 Filed 8–13–93; 8:45 am]

BILLING CODE 8010–01–M

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[12] 15 U.S.C. 78s(b) (1988).

[13] 17 CFR 200.30–3(a)(12) (1991).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2669]

Kansas; Amendment #3, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 3, 1993 to include Sedgwick and Sumner Counties in the State of Kansas as a disaster area as a result of damages caused by flooding and severe storms beginning on June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Cowley, Harper, and Kingman in the State of Kansas and Grant and Kay Counties in the State of Oklahoma may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 25, 1994.

The economic injury numbers are 793500 for Kansas and 793600 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 6, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–19656 Filed 8–13–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2668]

South Dakota; Amendment #2, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 3, 1993 to include Aurora, Campbell, Clark, Corson, Edmunds, and Hand Counties in the State of South Dakota as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on May 6, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Buffalo, Dewey, Hyde, Perkins, Potter, Walworth, and Ziebach in South Dakota may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration by the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 19, 1994.

The economic injury number for South Dakota is 793800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 6, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–19654 Filed 8–13–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2667]

Nebraska; Amendment #2, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated August 2 and August 3, 1993 to include the counties of Chase, Dundy, Furnas, Harlan, Hayes, Johnson, Merrick, and Saline in the State of Nebraska as a disaster area as a result of damages caused by severe storms and flooding beginning on June 23, 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: Perkins County in Nebraska; Phillips and Yuma Counties in Colorado; and Cheyenne, Decatur, Norton, and Rawlins Counties in Kansas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is

September 17, 1993 and for economic injury the deadline is April 19, 1994.

The economic injury numbers are 793400 for Nebraska; 793500 for Kansas; and 797800 for Colorado.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 6, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–19655 Filed 8–13–93; 8:45 am]

BILLING CODE 8025–01–M

Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Monday, September 27, 1993, through noon Tuesday, September 28, 1993, at the Indiana Small Business Development Center, One North Capitol Street, Indianapolis, Indiana.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the SBA, or others present.

For further information, write or call Judith Dunn, SBA, 5th Flr., 409 3rd Street, SW., Washington, DC 20416, telephone 202/205–7301.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–19653 Filed 8–13–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 20–XXX; Airworthiness Approval of Global Positioning System (GPS) Navigation Equipment for Use as a VFR and IFR Supplemental Navigation System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 20–XXX, Airworthiness Approval of Global Positioning System (GPS) Navigation Equipment for Use as a VFR and IFR Supplemental Navigation System. The proposed AC 20–XXX establishes an acceptable means of obtaining airworthiness approval of Global Positioning System (GPS) Equipment for use as a supplemental navigation system for oceanic, domestic en-route, terminal, and non-precision instrument approach. The AC addresses the approval of stand-alone GPS equipment only.

DATES: Comments submitted must be received on or before November 15, 1993.

ADDRESSES: Send all comments on the proposed AC 20–XXX to: Federal Aviation Administration, Ms. Bobbie J. Smith, Navigation and Communications Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington DC 20591, or deliver comments to the Federal Aviation Administration, room 806, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz G. Mueller, Federal Aviation Administration, Navigation and Communications Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC announced in this notice by submitting such written data, views, or arguments as they desire to the address above. Comments received on the proposed AC may be examined, both before and after the comment closing date, in room 806, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Background

The proposed advisory circular (AC) establishes an acceptable means of obtaining airworthiness approval of stand alone GPS equipment for use as a supplemental navigation system for oceanic, domestic en-route, terminal, and non-precision instrument approach (except localizer, localizer directional aid (LDA) and simplified directional facility (SDF) operations.

How To Obtain Copies

A copy of the proposed advisory circular may be obtained by contacting Ms. Bobbie J. Smith, Navigation and Communications Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC, on August 9, 1993.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 93–19659 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–M

Proposed Advisory Circular 20–130A; Airworthiness Approval of Navigation or Flight Management Systems Integrating Multiple Navigation Sensors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 20–130A, Airworthiness Approval of Navigation or Flight Management Systems Integrating Multiple Navigation Sensors. The proposed AC 20–130A establishes an acceptable means of obtaining airworthiness approval of multi-sensor navigation or flight management systems integrating data from multiple navigation sensors.

DATES: Comments submitted must be received on or before November 15, 1993.

ADDRESSES: Send all comments on the proposed AC 20–130A to: Federal Aviation Administration, Ms. Bobbie J. Smith, Navigation and Communications Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments to the Federal Aviation Administration, room 806, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Williams, Federal Aviation Administration, Navigation and Communication Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC announced in this notice by submitting such written data, views, or arguments as they desire to the address above. Comments received on the proposed AC may be examined, both before and after the comment closing date, in room 806, FAA Headquarters Building (FOB–10A),

800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Background

The proposed advisory circular (AC) establishes an acceptable means of obtaining airworthiness approval of multiple sensors navigation of flight management systems integrating data from multiple navigation sensors (including GPS) for use as a navigation system for oceanic domestic en route, terminal, and non-precision instrument approach (except localizer, localizer directional air (LDA) and simplified directional facility (SDF) operations. The AC does not address GPS equipment incorporating differential GPS capability.

How To Obtain Copies

A copy of the proposed advisory circular may be obtained by contacting Ms. Bobbie J. Smith, Navigation and Communications Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC, on August 9, 1993.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 93–19660 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–M

Helicopter Operations on the Quarry Helicopter Route, Boston, Massachusetts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meeting.

SUMMARY: This notice announces an informal airspace meeting to solicit information from airspace users concerning the safety of helicopter operations along the Quarry Helicopter Route depicted on the Boston Helicopter Route chart.

TIME AND DATE: The informal airspace meeting will be held from 7 p.m. to 10 p.m. on September 16, 1993.

PLACE: The location of the informal airspace meeting is as follows: City Hall, 1305 Hancock Street, 2nd Floor Conference Room, Quincy, MA 02169.

FOR FURTHER INFORMATION CONTACT: Mr. Willis Nelson, Assistant Manager, Airspace-Rules and Aeronautical Information Division, ATP–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–3731.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) This meeting will be informal in nature and will be conducted by FAA representatives. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make presentation to the FAA team will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the team to allocate an appropriate amount of time for each presenter. The team may allocate the time available for each presentation in order to accommodate all speakers. This meeting will not be adjourned until everyone on the list has had an opportunity to address the team. This meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to helicopter operations along the Quarry helicopter route will be accepted. Participants wishing to submit handout material should present *three* copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(3) This meeting will not be formally recorded. However, a summary of the comments made at this meeting will be prepared and will be made available to all interested parties by contacting the person listed under the **"FOR FURTHER INFORMATION CONTACT"** section.

Agenda

Opening Remarks and Discussion of Meeting Procedures, Background Information, Public Presentations, Closing Comments.

Issued in Washington, DC, on August 11, 1993.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–19658 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Reno Cannon International Airport and Reno Stead Airport, Reno, NV

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 Reno Cannon International Airport and at Reno Stead 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 15, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or
San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert White, Executive Director, Airport Authority of Washoe County at the following address: Airport Authority of Washoe County, 2001 East Plumb Lane, Reno, NV 89502.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Airport Authority of Washoe County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from Reno Cannon International Airport and at Reno Stead 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 29, 1993, the FAA determined that the application to impose and use a PFC submitted by the Airport Authority of Washoe County 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 October 29, 1993.

The following is a brief overview of the application.

Level of proposed PFC: $3.00

Proposed charge effective date: January 1, 1994

Proposed charge expiration date: January 30, 1999

Total estimated PFC revenue: $34,512,792.00

Brief description of the proposed projects: Reno Cannon International Airport

Impose and Use Projects: The Airport Authority of Washoe County local funds share of the FAA approved Letter of Intent (LOI) Project consisting of—reconstruction, widen and extend runway 16L/34R including blast pads, grooving, marking, lighting, signage and drainage; construct connector taxiways A, F, J, K, M, N, and P including marking, lighting, and signage; construct taxiways H, L, and C including marking, lighting, signage; access road improvements and drainage; acquire land for airport development and approach protection; environmental mitigation for runway and taxiway construction; relocate Airport Surveillance Radar, reconstruct taxiway A and taxiway B construction; construct Phase I & II of airport security system; baggage claim expansion; terminal modification for handicap access; residential soundproofing Phase I; construct airport drainage system; reconstruct terminal area ramp; reconstruct taxiway O; reconstruct airport concourse gates

Reno Stead Airport Use Project: Reconstruct taxiways A, C, D, and E

Reno Cannon International Airport Impose Only Projects: Purchase snow removal equipment; construct taxiway B south extension

Reno Stead Airport Impose Only Project: Construct airport perimeter road extension

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Carriers who file FAA form 1800–31

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Airport Authority of Washoe County.

Issued in Hawthorne, California, on August 4, 1993.

Robert C. Bloom,

Acting Manager, Airports Division Western-Pacific Region.

[FR Doc.93–19662 filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 31, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
3415–X	U.S. Department of Defense, Falls Church, VA (See Footnote 1).	3415
4884–X	Praxair, Inc., Danbury, CT (See Footnote 2).	4884
5704–X	U.S. Department of Defense, Falls Church, VA (See Footnote 3).	5704
7887–X	AeroTech, Inc., Las Vegas, NV (See Footnote 4).	7887
8725–X	CNG Cylinder Co., Long Beach, CA (See Footnote 5).	8725
9421–X	Taylor-Wharton Cylinders, Harrisburg, PA (See Footnote 6).	9421
9645–X	Bonar, Inc., Lindsay, Ontario, CN (See Footnote 7).	9645
9977–X	Hercules Aerospace Co., Magna, UT (See Footnote 8).	9977
10541–X	Aerojet Propulsion Division, Sacramento, CA (See Footnote 9).	10541
10692–X	Technical Manufactured Products, Jasper, GA (See Footnote 10).	10692
10741–X	Northern Natural Gas Co., Houston, TX (See Footnote 11).	10741

Application No.	Applicant	Renewal of exemption
10795–X	Mobil Oil Corp., Fairfax, VA (See Footnote 12).	10795

[1]To modify the exemption to provide for design variations to second stage rocket motors, classed as Division 1.1, 1.2 and 1.3 explosives.

[2]To modify the exemption to provide for additional commodities classed as Division 2.2 and 2.3 (inhalation hazards) for shipment in non-DOT specification cylinders with pressure relief devices.

[3]To modify the exemption to provide for a DOT Specification 1.7C drum and a DOT Specification 2U liner fpr ise om transporting explosives classed as Division 1.1, 1.2 and 1.3.

[4]To modify the exemption to authorize the transport of rocket reload kits, identified as Articles, explosives, n.o.s. Division 1.4C, as an additional commodity transported in DOT 1.2B fiberboard boxes and not to exceed 62.5 grams.

[5]To modify the exemption to provide for an alternative resting method and eliminate retesting requirements for non-DOT specification cylinder 2 for use in transporting various hazardous materials classed as Division 2.1 or 2.2.

[6]To modify the exemption to provide for alternative testing of non-DOT specification cylinders for use in transporting various hazardous materials classed as Division 2.1, 2.2 and 6.1.

[7]To modify the exemption to provide for an additional non-DOT specification portable tank for use in transporting various hazardous materials.

[8]To modify the exemption to provide for an additional design rocket motor with igniter installed classed as Division 1.3C.

[9]To modify the exemption to provide for design variation to rocket motors, classed as Division 1.3C, transported in specially designed non-DOT specification packaging.

[10]To modify the exemption to provide for additional models and design variations to non-DOT specification cylinders for use in transporting petroleum gases, classed as Division 2.1.

[11]To modify the original application to authorize non-DOT specification cylinders comparable to a 4BW for use in transporting compressed natural gas, classed as Division 2.1.

[12]To modify the exemption to provide for the modification of outage and filling requirements of multi-unit tank cars transporting Class 3 material.

Application No.	Applicant	Parties to exemption
4575–P	Allied-Signal, Inc., Morristown, NJ.	4575
4884–P	Allied-Signal, Inc., Morristown, NJ.	4884
4884–P	OSI Specialties, Inc., Sistersville, WV.	4884
6484–P	Texas Allied Chemicals, Inc., San Antonio, TX.	6484
6932–P	Produven, Caracas, Venezuela.	6932
8445–P	Ecosystems Management, Inc., Lafayette, LA.	8445
8451–P	Siebelair International, Inc., Richmond, CA.	8451
8943–P	Franklin Environmental Services, Inc., Wrentham, MA.	8943
9064–P	Union Miniere, Antwerpen, Belgium.	9064
9275–P	Muelhens Inc., Orange, CT.	9275
10001–P	Interstate Welding Sales Corp., Marinette, WI.	10001
10184–P	Allied-Signal, Inc., Morristown, NJ.	10184
10441–P	Environmental Enterprises, Inc., Cincinnati, OH.	10441
10497–P	Martin Marietta, Princeton, NJ.	10497
10916–P	Ashland Chemical, Inc., Columbus, OH.	10916
10967–P	Allied-Signal, Inc., Morristown, NJ.	10967
10982–P	Appleton Papers, Inc., Appleton, WI.	10982

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(a))

Issued in Washington, DC, on August 6, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–19566 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 15, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11065–N	City of Cincinnati/Department of Sewers, Cincinnati, OH.	49 CFR 173.67(i) & (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (mode 2)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11067–N	Hercules Incorporated, Wilmington, DE.	49 CFR 173.255(c), 49 CFR	To authorize the transportation of Organic Peroxide, Type D, liquid, classed as Division 5.2, in DOT Specification 57 portable tanks. (mode 1)
11068–N	Ontario Hydro, Toronto, Ontario, Canada.	49 CFR 49 CFR 178.245–1(b)	To manufacture, mark and sell non-DOT specification portable tanks comparable to DOT Specification 51 except the inlet and outlet openings are located at the side, for shipment of hydrogen sulfide, liquefied, classed as Division 2.3. (modes 1, 2, 3)
11069–N	Coulton Chemical Corporation, Sylvania, OH.	49 CFR (3) SP B14, 49 CFR 172.102(c).	To authorize the transport of sulfur dioxide, liquefied, PIH, Zone C material, classed as Division 2.3 in non-insulated MC 330 and MC 331 cargo tanks. (mode 1)
11070–N	National Aeronautics & Space Administration, (NASA) Washington, DC.	49 CFR 173.304	To authorize the shipment of anhydrous ammonia, classed as Division 2.2, in non-DOT specification cylinders described as part of the closed loop thermal control system for the space program. (mode 1)
11074–N	Interplastic Corporation, St. Paul, MN.	49 CFR 174.67(i) & (j)	To authorize tank cars to remain connected during unloading of dicyclopentadiene, Class 3, without the physical presence of an unloader. (mode 2)
11075–N	Kerr-McGee Chemical Corporation, Oklahoma City, OK.	49 CFR 172.202(e), 172.203(d)(2)(4), 172.310(a)(1), 172.331(b), 173.403(c), 173.425(c)(5), 173.443(a), 174.59, 174.700(e), 174.715(a).	To authorize relief from certain shipping paper, marking, placarding, and other requirements involving full trains of closed gondola cars containing soils and debris having low concentrations of naturally occurring radioactive material. (mode 2)
11077–N	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.226(b) & (173.227(b).	To authorize shipment in exclusive use vehicles, of methylhydrazine in 55 gallon UN 1A1 stainless steel drums and Nitric acid in 55 gallon UN 1B1 aluminum drums which deviate from the required wall thickness, secondary cap seal and overpack requirements for Group I Hazard Zone A&B materials. (mode 1)
11078–N	Ryder Aviall, Inc., Mt. Juliet, TN	49 CFR 173.159(d)(1) & (2)	To authorize the transport of batteries, wet, filled with alkali, electric storage, classed as Class 8, in specially designed packaging meeting UN 1H2 Packing Group III requirements to be shipped as essentially non-regulated. (modes 1, 2, 4, 5)
11080–N	Austin Powder Company, Cleveland, OH.	49 CFR 177.835(g)	To authorize the transportation of detonators for ammunition classed as Division 1.4 on the same motor vehicle with Division 1.1, 1.2, or 1.3 material, in a specially designed container. (mode 1)
11081–N	Central Welding Supplies, Inc., Lexington, KY.	49 CFR 173.302(f)	To authorize compressed carbon monoxide, classed as Division 2.3, to be transported in DOT–3AA6000 cylinders at 4800 psi. (mode 1)
11082–N	Advanced Tissue Sciences, Inc., La Jolla, CA.	49 CFR 173.136(a)(1), 173.137	To authorize an alternative mechanical type test method to determine corrosivity and specific packaging group. (modes 1, 2, 3, 4, 5)
11083–N	Rhone-Poulenc Basic Chemicals Co., Shelton, CT.	49 CFR 172.102 SPB 14	To authorize the use of non-insulated MC312, cargo tanks for transportation of sulfur trioxide, uninhibited, (inhalation hazard) Class 8. (mode 1)
11084–N	Ethyl Corporation, Baton Rouge, LA.	49 CFR 173.29(a)(2)	To authorize a one-time shipment of two out-of-test DOT Specification 105A300V rail cars, containing motor fuel anti-knock mixtures residue, Division 6.1. (mode 2)
11085–N	Union Tank Car Company, East Chicago, IN.	49 CFR 173.29(a)(2)	To authorize a one-time shipment of out-of-test DOT specification 111A100W3, rail car, containing fuel oil residue, Class 3. (mode 1)
11086–N	Standard Chlorine of Delaware, Inc., Delaware City, DE.	49 CFR 173.213	To authorize FIBCs manufactured under DOT–E8871 which incorporates a specially designed liner to be reused for the shipment of p-Dichlorobenzene classed as Division 6.1 (modes 1, 2, 3)
11087–N	Safety Storage, Inc., Hollister, CA	49 CFR 176.69(a)	To manufacture, mark and sell a specifically designed container, equipped with a fire protection system, containing certain hazardous materials to be excempt from the general storage requirements aboard cargo vessels. (mode 3)
11088–N	Federal Laboratories, Saltsburg, PA.	49 CFR 172.102	To exempt from labelling requirements small packages of various hazardous materials (i.e. tear gas type products) formerly requiring irritant label now reclassed to require a poison or explosive label. (modes 1, 3, 4, 5)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11089–N	InterTrans Services, Inc., Monmouth Beach, NJ.	49 CFR 172.102 8P74	To authorize the shipment of chloropicrin and residual amount of chloropicrin, Division 6.1, inhalation hazard in DOT Specification 105S and 105A tank cars without thermal protection. (mode 1)
11090–N	Mobile Ripening Systems, Inc., Jessup, MD.	49 CFR 177.809 and 177.817, Part 107, Subpart B, Appendix B, Part 172, Subpart C, D and E; 173.24(b)(1).	To authorize the controlled release of ethylene, contained in DOT specification cylinders, into a transport vehicle for the purpose of ripening fruits and vegetables. (mode 1)
11091–N	National Aeronautics and Space Administrative, Washington, DC.	49 CFR 173.34(e)(15)	To authorize DOT Specification 3A or 3AA cylinders, over 35 years old, used in hydrogen service, to be exempt from certain retest requirements. (mode 1)
11093–N	CP Rail (Canadian Pacific Limited) Montreal, Quebec, CN.	49 CFR 172.704(c)(2)	To extend the training program required under 49 CFR 172.704(c)(2) for train crew employees who transport hazardous materials in CP rail—owned vehicles from once every two years to once every three years. (mode 2)

Note: Notice of Application No. 11051–N Fluoroware Inc. that appeared at page 38459 of the Federal Register for July 16, 1993, should have appeared 11052–N Fluoroware Inc.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 6, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Progress, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–19567 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number: 15–63]

Prohibition of Trade Involving Nicaragua, Delegation of Authority

Dated: August 9, 1993.

1. Delegation

a. By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 321(b) and Executive Order (E.O.) 12513, dated May 1, 1985, the Director, Office of Foreign Assets Control, is hereby delegated all powers and authorities previously delegated to the Assistant Secretary (Enforcement) by Treasury Order (TO) 105–04 to prohibit trade and certain other transactions involving Nicaragua.

b. Treasury Directive (TD) 15–63 shall be revoked at the conclusion of all matters involving E.O. 12513.

2. Cancellation

TD 15–63, "Prohibition of Trade Involving Nicaragua," dated September 29, 1986, is superseded.

3. Authority

a. E.O. 12513, "Prohibiting Trade and Certain Other Transactions Involving Nicaragua," dated May 1, 1985 (50 FR 18629, 3 CFR, 1985 Comp., p. 342). E.O. 12513 was revoked by E.O. 12707; however, matters involving E.O. 12513 not finally concluded at the time of the revocation are not affected by the revocation.

b. TO 105–04, "Delegation of Authority to the Assistant Secretary for Enforcement," dated May 6, 1985.

4. Office of Primary Interest

Office of the Assistant Secretary (Enforcement).

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–19690 Filed 8–13–93; 8:45 am]

BILLING CODE 4810–25–P

Departmental Offices' Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Departmental Offices' Performance Review Board (PRB) and supersedes the list published in 57 FR 118 dated June 18, 1992, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of members of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The names and titles of the PRB members are as follows:

Joan Affleck-Smith—Director, Office of Thrift Institutions Oversight and Policy
John H. Auten—Director, Office of Financial Analysis
William E. Barreda—Deputy Assistant Secretary (Trade and Investment Policy)
Ralph L. Bayrer—Director, Office of Synthetic Fuels
Kurt Campbell—Special Assistant to the Under Secretary for International Affairs
Mary E. Chaves—Director, Office of International Debt Policy
Phillip N. Diehl—Counsel to the Secretary and Chief of Staff
Lowell Dworin—Director, Office of Tax Analysis
James H. Fall, III—Deputy Assistant Secretary (Developing Nations)
Jon M. Gaaserud—Director, U.S. Saudi Arabian Joint Commission Program Office
Geraldine A. Gerardi—Director for Business Taxation
Robert F. Gillingham—Deputy Assistant Secretary (Policy Coordination)
Faith Hochberg—Deputy Assistant Secretary (Law Enforcement)
Edward S. Knight—Executive Secretary and Senior Advisor to the Secretary
Susan Levine—Deputy Assistant Secretary (International Development & Debt Policy)
Michael Levy—Assistant Secretary (Legislative Affairs)
David Lipton—Deputy Assistant Secretary (Eastern European and Former Soviet Union Policy)
John W. Mangels—Director, Office of Operations
Deborah Miller Witchey—Acting Assistant Secretary (Management)
Alicia H. Munnell—Assistant Secretary (Economic Policy)
Edward E. Murphy—Senior Economist (Economic Policy)
Gerald Murphy—Fiscal Assistant Secretary
Barry S. Newman—Deputy Assistant Secretary (International Monetary Affairs)
Frank Newman—Under Secretary for Domestic Finance
Ronald K. Noble—Assistant Secretary (Enforcement)
Thomas P. O'Malley—Director, Management Programs Directorate

Jill K. Ouseley—Director, Office of Market Finance
Marcus W. Page—Deputy Fiscal Assistant Secretary
Charlene J. Robinson—Director, Human Resources Directorate
Leslie Samuels—Assistant Secretary (Tax Policy)
Charles Schotta—Deputy Assistant Secretary (Middle East & Energy Policy)
Sam Sessions—Deputy Assistant Secretary (Tax Policy)
Jeffrey Shafer—Assistant Secretary (International Affairs)
John P. Simpson—Deputy Assistant Secretary (Regulatory, Trade & Tariff Enforcement)
Jane L. Sullivan—Director, Office of Information Resources Management
Lawrence H. Summers—Under Secretary for International Affairs
Edwin A. Verburg—Director, Financial Services Directorate

FOR FURTHER INFORMATION CONTACT: Larry G. Hicks, Executive Secretary, PRB, room 1314, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone: (202) 622–1440. This notice does not meet the Department's criteria for significant regulations.

Deborah Miller Witchey,

Acting Assistant Secretary of the Treasury (Management).

[FR Doc. 93–19588 Filed 8–13–93; 8:45 am]

BILLING CODE 4810–25–M

Departmental Offices

Privacy Act of 1974, New System of Records

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of proposed system of records.

SUMMARY: This notice sets forth a system of records, the Waco Administrative Review Group Investigation. The purpose of the system of records is to implement a data base containing records of the investigation conducted by the Waco Administrative Review Group, and other relevant information with regard to the events leading to the Bureau of Alcohol, Tobacco and Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and where appropriate, to disclose to other law enforcement agencies which have an interest in the information.

DATES: Comments must be received on or before September 15, 1993. The system of records will be effective October 15, 1993, unless comments are received which result in a contrary determination.

ADDRESSES: Comments must be submitted to the Office of Enforcement, Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 4312, Washington, DC. 20220. Comments received will be available for inspection at the same address in the Office of Enforcement, Department of the Treasury, between the hours of 9 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nichole L. Jenkins, Attorney, Office of the Assistant General Counsel for Administrative and General Law, Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 1410, Washington, DC 20220, (202) 622–0450.

SUPPLEMENTARY INFORMATION: As an investigative and law enforcement office, the Office of Enforcement has a wide variety of investigatory responsibilities. As a part of that Office, the Waco Administrative Review Group is being established to conduct a comprehensive investigation of the Bureau of Alcohol, Tobacco and Firearms (BATF) including analyzing whether BATF procedures, policies and practices were adequate and whether they were followed. The Waco Administrative Review Group will collect and store information regarding individuals involved in the events leading to the BATF execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993. This information will be obtained during the course of an investigation conducted by the Waco Administrative Review Group. Where appropriate, Treasury will disclose this information to other law enforcement agencies which have an interest in this information. Authority for the system is provided by 5 U.S.C. 301; 31 U.S.C. 321. The Office of Enforcement will maintain these records to further the Government's investigative, enforcement, and prosecution efforts through collection, analysis and dissemination of the data where appropriate. Since the system of records includes subject files which are necessarily retrieved by personal identifier, the Privacy Act of 1974, as amended, 5 U.S.C. 552a, requires that the Office of Enforcement give general notice and seek public comments.

In a separate publication the Office of Enforcement is also giving public notice of a proposed rule to exempt this system of records from certain provisions of 5 U.S.C. 552a pursuant to subsections (j)(2), and (k)(2) of the same section.

Dated: July 29, 1993.

Deborah M. Witchey,

Acting Assistant Secretary (Management).

Dated: July 28, 1993.

Ronald K. Noble,

Assistant Secretary for Enforcement.

Treasury/DO .207

SYSTEM NAME:

Waco Administrative Review Group Investigation—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Office of Enforcement, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Department of the Treasury and its bureaus and persons whose associations with current and former employees relate to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas on February 28, 1993, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of the Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) developed in the course of the investigation. (B) Individuals who are: Witnesses; complainants; confidential or nonconfidential informants; suspects; defendants who have been identified by the Office of Enforcement, constituent units of the Department of the Treasury, other agencies, or members of the general public in connection with the authorized functions of the Office of Enforcement. (C) Members of the general public who provide information pertinent to the investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal misconduct pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993. (B) Investigative files which include: (1) Reports of investigations to resolve allegations of misconduct or violations of law and to comply with the President's specific directive for a factfinding report on the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, with related exhibits, statements, affidavits, records or other pertinent documents obtained

during investigation; (2) transcripts and documentation concerning requests and approval for consensual telephone and consensual nontelephone monitoring; (3) reports from or to other law enforcement bodies; (4) prior criminal or noncriminal records of individuals as they relate to the investigations; and (5) reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution; (6) videotapes of events pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions; (7) audiotapes with transcripts of events pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions; (8) photographs and blueprints pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions; and (9) drawings, sketches, models portraying events pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions.

PURPOSE:

The purpose of the system of records is to implement a data base containing records of investigation conducted by the Waco Administrative Review Group, and other relevant information with regard to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and, where appropriate, to disclose to other law enforcement agencies which have an interest in the information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena, where relevant and necessary, or in connection with criminal law proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and (6) provide a report to the President and the Secretary of the Treasury detailing the investigation and findings concerning the events leading to the Bureau of Alcohol, Tobacco & Firearms' execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records in binders and file jackets and all multisource media information are maintained in locked offices with access, through the administrative documents and records control personnel for the Waco Administrative Review Group, available to personnel with a need to know. Records will be maintained in locked offices during non-business hours. Records will be maintained in the Departmental Offices, in the main Treasury building which is subject to 24-hour security.

RETRIEVABILITY:

Alphabetically by name, and or by number, or other alpha-numeric identifiers.

SAFEGUARDS:

Records and word processing disks are maintained by administrative documents and records control personnel of the Waco Administrative Review Group. All access doors are locked when office is vacant. The records are available on a need-to-know basis to the Waco Administrative Review Group and Office of Enforcement personnel and other Federal and state law enforcement personnel who have an appropriate security clearance.

RETENTION AND DISPOSAL:

Investigative files are stored on-site for six years and indices to those files are stored on-site for ten years. The word processing disks will be retained indefinitely, and to the extent required they will be updated periodically to reflect changes and will be purged when the information is no longer required. Upon expiration of their respective retention periods, the investigative files and their indices are transferred to the Federal Records Center, Suitland, Maryland, for storage and in most instances destroyed by burning, maceration or pulping when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Enforcement, Room 4312–MT, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above

RECORD SOURCE CATEGORIES:

See "Categories of Individuals" above This system contains investigatory material for which sources need not be reported.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U S.C. 552(a)(c)(3)(4), (d)(1)(2)(3)(4), (e)(1)(2)(3), 4(G), (H) and (I), (e)(5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

This system exemption can be found at 31 CFR 1.36.

[FR Doc. 93–19691 Filed 8–13–93; 8:45 am]

BILLING CODE 4810–25

Internal Revenue Service

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of a petition requesting that acetylene black be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by October 15, 1993. Any modification of the list of taxable substances based upon this petition would be effective October 1, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on November 6, 1990. The petitioner is Chevron Chemical Company, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS Number: 2903.00.00.50
CAS number: 1333–86–4

This substance is derived from acetylene, a taxable chemical unless it is derived from coal. Acetylene black is a solid produced predominantly by direct thermal decomposition of acetylene.

The stoichiometric material consumption formula for this substance is:

C_2H_2 (acetylene) → 2 C (acetylene black) + 2 H (hydrogen)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.50 per ton unless it is produced from acetylene derived from coal. This is based upon a conversion factor for acetylene of 1.13. If this substance is produced from acetylene derived from coal it would not be a taxable substance.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19580 Filed 8–13–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of a petition requesting that butanol be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to this petition must be received by October 15, 1993. Any modification of the list of taxable substances based upon this petition would be effective October 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on November 8, 1989. The petitioner is Hoechst Celanese, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 2905.13.00.00
CAS number: 71–36–3

This substance is derived from the taxable chemicals propylene and methane. Butanol is a liquid produced predominantly by oxo synthesis of propylene with subsequent hydrogenation.

The stoichiometric material consumption formula for this substance is:

C_3H_6 (propylene) + CH_4 (methane) + H_2O (water) → $C_4H_{10}O$ (butanol) + H_2 (hydrogen)

According to the petition, taxable chemicals constitute 76.3 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.31 per ton. This is based upon a conversion factor for propylene of 0.6746 and a conversion factor for methane of 0.0076.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19576 Filed 8–13–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of petitions requesting that terephthalic acid and polybutene be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by October 15, 1993. Any modification of the list of taxable substances based upon these petitions would be effective January 1, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T.R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on January 16, 1990. The petitioner is Amoco Corporation, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Terephthalic Acid

HTS number: 2917.36.00 00
CAS number: 100–21–0

This substance is derived from the taxable chemical xylene. Terephthalic acid is a solid produced predominantly by air oxidation of para-xylene.

The stoichiometric material consumption formula for this substance is:

C_8H_{10} (xylene) + 3 O_2 (oxygen) → $C_8H_6O_4$ (terephthalic acid) + 2 H_2O (water)

According to the petition, taxable chemicals constitute 52.4 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $6.47 per ton before January 1, 1992, and $3.11 per ton for imported terephthalic acid first sold or used after December 31, 1991. This is based upon a conversion factor for xylene of 0.639.

Polybutene

HTS number: 3902.20.50.00
CAS number: 9003–28–5 and 25249–62–1

This substance is derived from the taxable chemical butylene. Polybutene is a polymer produced predominantly by the polymerization of isobutylene.

The stoichiometric material consumption formula for this substance is:

n(C_4H_8) (isobutylene) → $(C_4H_8)_n$ (polyisobutylene)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.87 per ton. This is based upon a conversion factor for butylene of $1.00.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19577 Filed 8–13–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of petitions requesting that pentaerythritol, trimethylolpropane, 1,3-butylene glycol, and paraformaldehyde be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by October 15, 1993. Any modification of the list of taxable substances based upon these petitions would be effective July 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on September 19, 1989. The petitioner is Hoechst Celanese, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Pentaerythritol

HTS number: 2905.42.00.00
CAS number: 115–77–5

This substance is derived from the taxable chemicals ethylene, methane, and sodium hydroxide. Pentaerythritol is a solid produced predominantly by the alkaline catalyzed "crossed-cannizzaro" reaction between acetaldehyde and formaldehyde. Most acetaldehyde is produced by direct oxidation of ethylene. All formaldehyde is produced by catalytic vapor phase oxidation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

C_2H_4 (ethylene) + 4 CH_4 (methane) + 2.5 O_2 (oxygen) + NaOH (sodium hydroxide) → 4 H_2 (hydrogen) + HCOONa (sodium formate) + $C_5H_{12}O_4$ (pentaerythritol)

According to the petition, taxable chemicals constitute 62.2 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.66 per ton. This is based upon a conversion factor for ethylene of 0.2877, a conversion factor for methane of 0.9120, and a conversion factor for sodium hydroxide of 0.4700.

Trimethylolpropane

HTS number: 2905.41.00.00
CAS number: 77–99–6

This substance is derived from the taxable chemicals propylene, methane, and sodium hydroxide. Trimethylolpropane is a solid produced predominantly by the mixed aldolization of formaldehyde with n-butryaldehyde. Formaldehyde is produced by catalytic vapor phase oxidation of methanol. Both carbon monoxide and methanol are produced from methane. The most widely used manufacturing technique for butyraldehyde is the process in which propylene is combined with carbon monoxide and hydrogen.

The stoichiometric material consumption formula for this substance is:

C_3H_6 (propylene) + 4 CH_4 (methane) + NaOH (sodium hydroxide) + 1.5 O_2 (oxygen) + H_2O (water) → HCOONa (sodium formate) + 5 H_2 (hydrogen) + $C_6H_{14}O_3$ (trimethylolpropane)

According to the petition, taxable chemicals constitute 68.8 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.45 per ton. This is based upon a conversion factor for propylene of 0.4527, a conversion factor for methane of 0.6214, and a conversion factor for sodium hydroxide of 0.3900.

1,3-butylene glycol

HTS number: 2905.39.10.00
CAS number: 107–88–0

This substance is derived from the taxable chemicals ethylene and methane. 1,3-butylene glycol is a liquid produced predominantly by catalytic hydrogenation of acetaldol. Acetaldol is a condensation product of acetaldehyde. Acetaldehyde is produced by oxidation of ethylene. Hydrogen is obtained by steam reforming methane.

The stoichiometric material consumption formula for this substance is:

2 C_2H_4 (ethylene) + CH_4 (methane) + H_2O (water) + O_2 (oxygen) → 2 H_2 (hydrogen) + CO (carbon monoxide) + $C_4H_{10}O_2$ (1,3-butylene glycol)

According to the petition, taxable chemicals constitute 59 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.89 per ton. This is based upon a conversion factor for ethylene of 0.9298 and a conversion factor for methane of 0.1055.

Paraformaldehyde

HTS number: 2912.60.00.00
CAS number: 30525–89–4

This substance is derived from the taxable chemical methane. Paraformaldehyde is a solid produced primarily from aqueous formaldehyde. Formaldehyde is produced by catalytic vapor phase oxidation of methanol. Methanol is produced from methane.

The stoichiometric material consumption formula for this substance is:

$10\ CH_4$ (methane) + $5\ O_2$ (oxygen) + H_2O (water) → $10\ H_2$ (hydrogen) + $HO(CH_2O)_{10}H$ (paraformaldehyde)

According to the petition, taxable chemicals constitute 92.2 per cent by value of the materials used to produce this substance. The stated cost for methane is $0.0386 per pound, the stated cost for water (steam) is $0.0023 per pound, and the stated cost for oxygen is $0.0030 per pound. The rate of tax for this substance would be $2.31 per ton. This is based upon a conversion factor for methane of 0.6716.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19578 Filed 8–13–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of a petition requesting that propanol be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to this petition must be received by October 15, 1993. Any modification of the list of taxable substances based upon this petition would be effective October 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on November 8, 1989. The petitioner is Hoechst Celanese, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 2905.12.00.10

CAS number: 71–23–8

This substance is derived from the taxable chemicals ethylene and methane. Propanol is a liquid produced predominantly by oxo synthesis of ethylene with subsequent hydrogenation.

The stoichiometric material consumption formula for this substance is:

C_2H_4 (ethylene) + CH_4 (methane) + H_2O (water) → C_3H_8O (propanol) + H_2 (hydrogen)

According to the petition, taxable chemicals constitute 70.9 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.58 per ton. This is based upon a conversion factor for ethylene of 0.5251 and a conversion factor for methane of 0.0076.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19579 Filed 8–13–93; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

[AC–35: OTS No. 1985]

Avondale Federal Savings Bank, Chicago, Illinois; Approval of Conversion Application

Notice is hereby given that on August 9, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Avondale Federal Savings Bank, Chicago, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: August 10, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19634 Filed 8–13–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–34: OTS No. 5902]

First Federal Savings and Loan Association of Storm Lake, Storm Lake, Iowa; Approval of Conversion Application

Notice is hereby given that on August 6, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Storm Lake, Storm Lake, Iowa, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: August 10, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19633 Filed 8–13–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–36: OTS No. 3391]

First Federal Savings and Loan Association of Belvidere, Belvidere, Illinois; Approval of Conversion Application

Notice is hereby given that on August 9, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Belvidere, Belvidere, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, IL 60601–4360.

Dated: August 10, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19635 Filed 8–13–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–38; OTS No. 3699]

First Federal Savings and Loan Association of Anderson, Anderson, South Carolina; Approval of Conversion Application

Notice is hereby given that on August 10, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Anderson, Anderson, South Carolina, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

Dated: August 10, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19637 Filed 8–13–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–37; OTS NO. 4927]

Mutual Federal Savings Bank, Somerset, Kentucky; Approval of Conversion Application

Notice is hereby given that on August 10, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Mutual Federal Savings Bank, Somerset, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: August 10, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19636 Filed 8–13–93; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 156

Monday, August 16, 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).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 16, 23, 30, and September 6, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 16

Thursday, August 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Georgia Power Company's Appeal of LBP–93–5 (Tentative)
(Contact: Cecilia Carson, 301–504–1625)
b. Oncology Services Corportation—Review of LBP–93–10 (Tentative)
(Contact: Margaret Doane, 301–504–2001)
c. Pacific Gas & Electric Co.—Licensing Board's Referred Ruling in LBP–93–13 (Tentative)
(Contact: Roland Frye, 301–504–3505)

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)
2:00 p.m.
Briefing on Results of Agreement State Compatibility Workshop (Public Meeting)
(Contact: Shelly Schwartz, 301–504–2325)

Week of September 6—Tentative

Thursday, September 9

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)
3.30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 10

9:00 a.m.
Briefing on Proposal to Realign NRC Regions IV and V (Public Meeting)
(Contact: James Turdici, 301–504–1728)
10:30 a.m.
Briefing by advanced Reactor Corporation (Public Meeting)
2:00 p.m.
Briefing on management Plan for Regulating Medical Use of Byproduct Material (Public Meeting)
(Contact: Carl Paperiello, 301–504–2659)

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 11, 1993.

William M. Hill, Jr.,

Secretary Tracking Officer, Office of the Secretary.

[FR Doc. 93–19851 Filed 8–12–93; 3:13 pm]

BILLING CODE 7590–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1459]

TIME AND DATE: 10 A.M. (EDT), August 18, 1993.

PLACE: Chattanooga Office Complex Auditorium, Chattanooga, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on May 12, 1993.

DISCUSSION ITEMS:

1. Clean Water Update.
2. Rate Review.

ACTION ITEMS:

New Business

E—Real Property Transactions

E1. Grant of Permanent Easement to Hiwassee Utilities Commission Affecting Approximately 0.10 Acre of Land on Chickamauga Lake, Bradley and McMinn Counties, Tennessee.

E2. Sale of Permanent Easement to South Central Bell Telephone Company Affecting Approximately 2.7 Acres of Land on Chickamauga Lake, Hamilton County, Tennessee.

E3. Change in Land Use Allocation for 16.8 Acres of Land on Kentucky Lake to Allow Construction of a Public Boat Launching Ramp.

F.—Unclassified

F1. Supplement to Contract No. TV–89601V with Fish and Wildlife Associates, Inc.

F2. Filing of Condemnation Cases.

INFORMATION ITEMS:

1. Agreement with Powell Valley Electric Cooperative for a Direct Load Control Program.

2. Supplemental Arrangements Involving Cooperative Efforts with Tennessee Valley Public Power Association and Distributors Insurance Company (TVPPA Insurance).

3. Supplement to Contract No. 91NNP–44970C with Ebasco Constructors, Incorporated. Approval was subject to satisfactory negotiations and final review prior to execution.

4. Supplement to Personal Services Contract TV–83216V with BCP Technical Services, Inc. Approval was subject to satisfactory negotiations and final review prior to execution.

5. Supplement to Personal Services Contract TV–85775V with Stone & Webster Engineering Corporation. Approval was subject to satisfactory negotiations and final review prior to execution.

6. Filing of Condemnation Cases.

7. Supplement No. 8 to Contract No. TV–85454V–1 with Stone and Webster Engineering Corporation. Approval was subject to satisfactory negotiations and final review prior to execution.

8. Amendments to the Rules and Regulations of the TVA Retirement System.

9. Sale of Permanent Easement Affecting Approximately 35 Acres of Land in the Town of Franklin to Williamson County, Tennessee, for Public Recreation.

10. Grant of Permanent Easement Affecting Approximately 1.68 Acres of Land on the Upper Bear Creek Lake, Marion County, Alabama, to the Bear Creek Development Authority for a Water Treatment Plant Expansion.

11. Grant of Permanent Easement Affecting Approximately 10 Acres of Land on Wheeler Lake in Lawrence County, Alabama, to the West Morgan-East Lawrence Water Authority for a Water Treatment Plant.

12. 20-Year Term Easement Affecting 0.05 Acre of Land on Melton Hill Lake in Anderson County to the Claxton Volunteer Fire Department, Incorporated, for Construction of a Fire Station.

13. Public Auction Sale of Property Affecting Approximately 0.07 Acre of Land and Acquisition of 0.05 Acre of Land on Melton Hill Lake in Anderson County, Tennessee, to Carlos E. Gregory.

14. Grant of Permanent Easement Affecting 0.2 Acre of Land on Guntersville Lake, Marion County, Tennessee, to Tennessee Department of Transportation for a Highway Right-of-Way.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President,

Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: August 11, 1993.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 93–19790 Filed 8–12–93; 10:34 am]

BILLING CODE 8120–08–M

Corrections

Federal Register
Vol. 58, No. 156
Monday, August 16, 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.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 930232-3166; I.D. 120492C]

RIN 0648-AD39

Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 93-17607 beginning on page 39680 in the issue of Monday, July 26, 1993 make the following correction:

§ 672.2 [Corrected]

On page 39683, in the first column, in § 672.2(8), in the third line, "of" should read "or".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32681; File No. SR-OCC-92-24]

Self-Regulatory Organizations; The Options Clearing Corp. Order Approving a Proposed Rule Change To Expand the Cross-Margin Program Between The Options Clearing Corp. and the Board of Trade Clearing Corporation to Include Non-proprietary Positions of Market Professionals

July 27, 1993.

Correction

In notice document 93-18415 beginning on page 41302 in the issue of Tuesday, August 3, 1993, the date was omitted and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ASW-27]

Proposed Establishment of Class D Airspace: Alice, TX; Corpus Christi, TX

Correction

In proposed rule document 93-17166 beginning on page 38734 in the issue of Tuesday, July 20, 1993, make the following correction:

§ 71.1 [Corrected]

1. On page 38735, in the second column, in § 71.1, under **ASW TX CZ Alice, TX [New]**, in the first line, "lat. 25°" should read "lat. 27°".

BILLING CODE 1505-01-D

federal register

Monday
August 16, 1993

Part II

Commodity Futures Trading Commission

Exemptions for Certain Exchange-Traded Futures and Options Contracts; Notice

COMMODITY FUTURES TRADING COMMISSION

Exemptions for Certain Exchange-Traded Futures and Options Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petitions for exemptions and request for comment.

SUMMARY: Pursuant to Section 4(c) of the Commodity Exchange Act ("CEA" or "Act"), the Chicago Mercantile Exchange ("CME") and the Board of Trade of the City of Chicago ("CBOT") have applied for exemptions from the requirements of the Act for certain exchange-traded futures and options contracts. The Commodity Futures Trading Commission ("Commission") is hereby giving notice of the petitions and soliciting the views of interested persons.

DATES: Written comments must be received by the Commission by the close of business on November 5, 1993.

ADDRESSES: Interested persons should submit their written views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Pat G. Nicolette, Acting General Counsel, David R. Merrill, Deputy General Counsel, Ellyn S. Roth, Attorney, Office of the General Counsel at (202) 254–9880 or Gerald D. Gay, Director, Division of Economic Analysis at (202) 254–6990, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 2(a)(1)(A) of the Act grants the Commission exclusive jurisdiction over "accounts, agreements (including any transaction which is of the character of . . . an 'option' . . .), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market . . . or any other board of trade, exchange, or market . . . ." 7 U.S.C. § 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the Commission.[1]

On October 28, 1992, the Futures Trading Practices Act of 1992 ("1992 Act") was signed into law. P.L. No. 102–546. This legislation added new subsections (c) and (d) to Section 4 of the Act. New Section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirements of Section 4(a) or any other requirement of the Act other than section 2(a)(1)(B).[2] New Section 4(c)(2) provides that the Commission may not grant an exemption from the exchange-trading requirement of the Act unless, *inter alia*, the agreement, contract, or transaction being exempted will be entered into solely between "appropriate persons" as defined in new Section 4(c)(3)[3] subject to such limitations as may be deemed appropriate by the Commission, in the public interest.[4] In granting such an exemption, the Commission must also determine that the agreement, contract, or transaction in question will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act and that the exemption would be consistent with the public interest and the purposes of the Act.[5]

II. The Application for Exemptive Relief From the CME

On April 8, 1993, the Commission received a petition for exemptive relief submitted pursuant to Section 4(c) of the Act on behalf of the Chicago Mercantile Exchange with respect to the purchase and sale of contracts known as Rolling Spot Futures Contracts and options on those contracts (collectively "Rolling Spot Contracts"). On June 18, 1993 the Commission received a supplement to that petition.[6] Based upon the application and the supplemental submission, the Commission understands that the exemption sought would encompass the same contracts in which the CME was designated by the Commission as a contract market on April 6, 1993 and May 19, 1993.[7] According to the

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[1] Sections 4(a), 4c(b) and 4c(c) of the Act; 7 U.S.C. 6(a), 6c(b), 6c(c). Section 4(a) of the CEA specifically provides, *inter alia*, that it is unlawful to enter into a commodity futures contract that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity." 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a).

[2] Specifically, Section 4(c)(1), 7 U.S.C. 6(c)(1), provides that in order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.

[3] Section 4(c)(3), 7 U.S.C. 6(c)(3), provides that the term "appropriate person" shall be limited to the following persons or classes thereof:

(A) A bank or trust company (acting in an individual or fiduciary capacity).

(B) A savings association.

(C) An insurance company.

(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(E) A commodity pool formed or operated by a person subject to regulation under this Act.

(F) A cooperation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.

(G) An employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 et seq.), or a commodity trading advisor subject to regulation under this Act.

(H) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.

(I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person.

(J) A futures commission merchant, floor broker, or floor trader subject to regulation under this Act acting on its own behalf or on behalf of another appropriate person.

(K) Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

[4] *See* H.R. Rep. No. 978, 102d Cong., 2d Sess. at 79 (1992).

[5] Specifically, Section 4(c)(2), 7 U.S.C. 6(c)(2), states that the Commission shall not grant any exemption from any of the requirements of subsection (a) unless the Commission determines that—

(A) The requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act.

[6] The full text of the petition and supplement is reproduced at the end of this notice.

[7] A copy of the Commission's designation orders as well as the memorandum from the Commission's

exchange, the contracts closely mirror common cash market instruments now traded in the over-the-counter market, provide many economic advantages over these instruments, and if allowed to operate with regulatory parity, would provide considerable benefits in terms of costs, price transparency, and counterparty credit exposure to the current users of these instruments. The application also makes clear that trades in Rolling Spot Contracts would be cleared through the CME clearing house and that Rolling Spot Contracts would be eligible for trading through the GLOBEX electronic trading system.

The CME does not seek an exemption from the provisions of the Act and the Commission's rules that generally prohibit fraud, embezzlement, manipulation or attempted manipulation, specifically Sections 4b, 4o, 6(c), 6(d), 6c, 9(a) and 9(b) of the Act and Commission rules 4.15, 33.9 and 33.10. Additionally, the exchange does not seek an exemption from Regulation 1.17,[8] which sets minimum financial requirements for futures commission merchants and introducing brokers, nor from Commission regulation 1.59, which establishes standards for the activities of self-regulatory organization employees and governing members who possess material, non-public information.[9]

Based on the application, the Commission also understands that the application encompasses Rolling Spot Contracts entered into solely between "Eligible Rolling Spot Participants," which would be limited to the following persons or classes of persons:

(1) A bank or trust company (acting on its own behalf or on behalf of another Eligible Rolling Spot Participant);

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an Eligible Rolling Spot Participant;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an Eligible Rolling Spot Participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an Eligible Rolling Spot Participant (a) which has total assets exceeding $10,000,000 or (b) the obligations of which under currency transactions (including but not limited to spot, forward, option and/or swap transactions) are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (6)(a) or by an entity referred to in paragraphs (1), (2), (3), (4), (5), (7) or (8); or (c) which has a net worth of $1,000,000 and enters into the Rolling Spot Contract in the conduct of its business; or which has a net worth of $1,000,000 and enters into the Rolling Spot Contract to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another Eligible Rolling Spot Participant; *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of (6) or (11) of this section;

(10) A futures commission merchant subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another Eligible Rolling Spot Participant; *Provided, however,* that if such futures commission merchant is a natural person or proprietorship, the futures commission merchant must also meet the requirements of (6) or (11) of this section;

(11) Any natural person with total assets exceeding at least $10,000,000; or

(12) An exchange member at the CME, trading on his or her own behalf or on behalf of another Eligible Rolling Spot Participant.

III. The Application for Exemptive Relief From the CBOT

On June 30, 1993, the Commission received a petition submitted on behalf of the CBOT.[10] The petition requests that the Commission propose rules which would establish a "professional trading market exemption" under Section 4(c) of the Act. Based on the petition, the Commission understands that the "professional trading market exemption" would apply to trading in any instrument of the CBOT or other boards of trade, including those which have been previously designated by the Commission, and would exempt such trading from the CEA (except section 2(a)(1)(B)) and Commission rules, subject to certain conditions.

The Commission also understands that the exemption would be available upon written notice to the Commission by an applicable board of trade. To qualify for this exemption, a board of trade would meet to limit trading in exempt instruments to only those parties that satisfy the definition of "professional trader." The term "professional trader" has essentially the same definition as "Eligible Rolling Spot Participant" in the CME application, described above.

The CBOT's petition proposes that any transactions exempted by the Commission pursuant to Section 4(c) of the Act should be subject to an antifraud and antimanipulation rule, which the Commission should adopt specifically for these transactions.[11, 12]

staff recommending designation are available upon request from the Commissioner's Office of the Secretariat.

[8] Of course, persons not required to register under the Act are, in any event, not subject to Rule 1.17.

[9] The Commission presumes that the exchange is not seeking relief from new Section 9(f) of the Act, which, *inter alia*, imposes certain additional restrictions on these activities.

[10] The full text of the petition is reproduced at the end of this notice.

[11, 12] The CBOT's proposed rule reads as follows:

(a) *Fraud.* It shall be unlawful for any person, directly or indirectly, in or in connection with any agreement, contract or transaction that is subject to an exemption from Section 4(a) of the Act granted by the Commission under Section 4(c) of the Act or an exemption from § 33.3 of this chapter granted by the Commission under Section 4c of the Act—

Continued

Violations of that rule would give rise to private rights of action.[13] The CBOT also does not request relief from Commission registration requirements. The petition also provides that the transactions must be cleared through a Commission-approved mutualized-risk clearing system.

The CBOT supports its petition based on the reasoning that "an exempt professional trading market would afford those OTC [over-the-counter] market users the price transparency, legal certainty and reduced credit risk of exchange markets, without the burdens of general federal regulation." According to the exchange, market users "should find it easier and less expensive to engage in derivative transactions on exchanges, thereby reducing price risks and volatility in our national economy overall."

IV. Standards for Exemptive Relief

The Commission is hereby seeking comments concerning the appropriate disposition, pursuant to Section 4(c) of the Act, or the applications submitted by the CME and the CBOT.

As noted above, the Commission, pursuant to Section 4(c) of the Act, is authorized to "exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) [Section 4(a) of the Act] (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction)" from the prohibition on off-exchange futures trading or from any other provision of the Act other than Section 2(a)(1)(B).[14] In addition, in granting any exemption under Section 4(c) from any of the requirements of Section 4(a), the Commission must determine that the exemption would be consistent with the public interest and the purposes of the Act.[15] Finally, the Commission must determine that the agreement, contract or transaction to be exempted will be entered into solely between "appropriate persons" (as defined in Section 4(c)(3)) and that the exemption "will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act."[16]

In considering the issues presented by the petitions, the Commission is seeking comments concerning the following specific issues:

A. Public Interest and Purposes of the Act

1. Generally

The applications are the first received by the Commission to seek exemptive relief pursuant to Section 4(c) for futures and commodity options contracts that are or will be traded on an exchange. They are also the first to seek exemptive relief for transactions that are or will be cleared through a mutualized risk clearing system. As such, they raise significant issues. In granting the Commission exemptive authority Congress specifically expected the Commission to act to bring legal certainty to four particular areas: swaps, forwards, hybrids and bank deposits and accounts. Conference Report at 81. At the same time the conferees disclaimed any intention that the new authority was to prompt a wide-scale deregulation of markets falling within the ambit of the Act, *id.*, and also expressed their intent that the Commission implement this authority in a fair and even-handed manner to products and systems sponsored by exchanges and non-exchanges alike, *id.* at 78.

The Commission requests comment on whether the CME and CBT have adequately demonstrated factors that differentiate the transactions which are the subject of these petitions from futures and options contracts as generally traded on designated contract markets? Do the differences justify exempting the transactions from most provisions of the Act and Commission regulations while retaining the applicability of those provisions to other futures and options contracts traded on the exchanges and on other contract markets? For example, most participants in designated futures markets would meet the criteria for eligible participants set forth in the applications. Is adequate information available to evaluate the nature of current exchange-traded futures and options customers, and can the exchanges show how eligible participants would differ from those customers?

Do the applications adequately address the public interest concerns incorporated in Section 3 of the Act? Section 3 recognizes that a "national public interest" exists in transactions conducted on boards of trade, specifically refers to the dissemination of prices involved in such transactions and the use of such prices by producers and consumers of commodities, and finds federal regulation in this area to be imperative. Is this regulatory interest diminished by the exclusion of any category of traders from a market? Furthermore, since the transactions covered by the petitions presumably would be traded subject to exchange or other rules, is there a public interest in retaining some or all of the requirements of Sections 5 and 5a of the Act?[17] In this context, commenters are invited specifically to address different aspects of the public interest served by centralized and dealer markets. Further, how is the public interest served by having different regulatory regimes for centralized and dealer markets?

The Commission, to date, has used its exemptive authority under Section 4(c)

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(1) To cheat or defraud or attempt to cheat or defraud any other person;

(2) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(3) To deceive or attempt to deceive any other person by any means whatsoever.

(b) *Manipulation.* It shall be unlawful for any person to manipulate or attempt to manipulate the price (i) of any agreement, contract or transaction that is subject to an exemption from Section 4(a) of the Act granted by the Commission under Section 4(c) of the Act or an exemption from § 33.3 of this chapter granted by the Commission under Section 4c of the Act or (ii) of any commodity in interstate commerce or any contract of sale of a commodity for future delivery on or subject to the rules of any contract market.

(c) *Exemption disqualification.* Any person violating this regulation shall be disqualified from relying upon any exemption granted by the Commission under Sections 4(c) or 4c of the Act.

(d) *Private right of action.* In accordance with the procedures set forth in Section 22 of the Act, any person injured by a violation of subsections (a) or (b) of this regulation may bring a right of action [sic] for actual damages suffered as a result of that violation against any person who committed or aided and abetted that violation.

[13] *Id.*

[14] Any exemptive relief granted by the Commission would not affect the applicability or protections of state law (other than gaming or "bucket shop" laws), including applicable securities laws or antifraud statutes of general applicability, to the exempted contracts or any other protections provided by other applicable federal laws. Congress specifically noted that, in exempting an instrument from the Act, the Commission cannot exempt it from applicable securities and banking laws and regulations. H.R. Rep. No. 978, 102d Cong. 2d Sess. 83 (1992) ("Conference Report").

[15] In this regard, the Conference Report on the 1992 Act states that the "public interest" under Section 4(c) includes the "national public interests noted in the [Act], the prevention of fraud and the preservation of the financial integrity of the markets, as well as the promotion of responsible economic or financial innovation and fair competition." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992). The Conference Report notes that the reference to the purposes of the Act was intended "to underscore [the] expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants." *Id.*

[16] In connection with making this determination, the Conference Report notes that the Commission is expected to consider such regulatory concerns as market surveillance, financial integrity of participants, protection of customers, and trade practice enforcement. H. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[17] Sections 5 and 5a generally deal with contract market designation and operation requirements.

in three instances.[18] In each instance, the Commission was guided by the statement in the Conference Report that the goal of providing the Commission with broad exemptive powers was "to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner." H. Rep. No. 978, 102d Cong., 2d Sess. 81 (1992). To the extent the petitions seek to exempt markets for which designation as a contract market has been sought and obtained, consideration of this proposed exemption may require a different analysis under Section 4(c) than that previously applied. In this regard, what additional or different considerations, if any, from those considered in the context of exempting swaps, hybrids and energy contracts, should be assessed to determine whether the requested exemptions are consistent with Congress' intent in granting the Commission exemptive authority under Section 4(c)?

Commenters are invited to address the extent to which the petitions are consistent with the Congressional directive that "the granting of general exemptive authority is intended to promote responsible economic and financial innovation and fair competition."[19] In considering fair competition the Commission intends to follow the Congressional directive to act "in a fair and even-handed manner to [evaluate] [products and systems sponsored by exchanges and non-exchanges alike."[20] Commenters should address the issue of whether the underlying facts and circumstances of these petitions support exemptive relief similar to that granted the swaps, hybrids and energy contracts discussed above as well as whether additional or different considerations are warranted. The Commission is also interested in receiving comments on whether exemptive relief from selected provisions of the Act other than Section 4(a) or selected regulations would adequately promote competitiveness between exchange-traded and off-exchange products.

2. Registration Requirements

The CME's petition seeks exemptions from the registration requirements of the Act and Commission regulations. In light of the importance of the registration requirement to the Act's regulatory scheme, is it appropriate to permit unregistered persons who may be unfit to conduct business in regulated futures markets for or on behalf of others or to execute orders on exchanges for themselves?[21] Are the customers who could participate in the exempt transactions capable of evaluating the risk of trading through unregistered persons, or are exchange membership requirements and screenings an adequate substitute for the registration system?

3. Customer Protection Requirements and Trade Practices Issues

Both[22] Section 4c(a) of the Act and various Commission regulations (for example, rules 1.38, 1.39 and Part 155) evince a policy determination by Congress and the Commission that the open and competitive execution of customer orders both furthers the economic functioning of the marketplace and protects customers from possible abusive practices. Should the standards set forth in Part 155 of the Commission's regulations designed to prohibit trading ahead of customer orders continue to apply to exempted transactions? The prohibitions against wash sales, cross trades, accommodation trades and fictitious sales in Section 4c(a) as well as Rule 1.38 also reflect a concern that volume, price and open interest information disseminated to other traders and the public reflect competitively-executed *bona fide* transactions and positions in the market. Both the CME and the CBOT petitions seek exemption from these provisions and contemplate off-floor negotiations of trades. Can the Commission grant an exemption from these requirements without a material adverse effect on its ability to discharge its regulatory duties under the Act? Or are the Commission and eligible participants able to monitor adequately broker's activity to detect abusive practices? Should controls be retained on the nature of the procedures for off-floor discussions of trades and of transactions executed on the floor? What are the cost and benefits to market users and, separately, intermediaries in giving up the transparency of open and centralized order execution for privately-negotiated transactions?

If a bifurcated market were to develop, with similar exempt and non-exempt contracts trading simultaneously on an exchange, would trading ahead of a customer in exempt contracts be deemed "trading ahead" of customer orders in a non-exempt contract or vice versa? If so, how would the Commission enforce the trading ahead prohibition as to non-exempt contracts without access to complete records of transactions in both exempt and non-exempt contracts? Would it be permissible to disclose customer orders for exempt transactions or to employ information about such transactions in executing proprietary transactions for the FCM or for a member's own account?

On the other hand, should off-floor pricing of such trades and differential pricing of large trades be permitted? Would the elimination of persons other than "appropriate persons" from this market make such practices consistent with market integrity? Is there any empirical evidence to demonstrate that small orders and retail customers could be better serviced if large orders were handled separately?

Section 166.3 of the Commission's regulations requires Commission registrants to supervise diligently their employees and agents in handling commodity interest accounts. Neither of the exchanges has addressed the continued applicability of this regulation. What are the costs and benefits of continuing to apply the supervision requirement to exempt transactions? How would supervisory systems adequately address a situation where registrants would handle both exempt and non-exempt transactions?

4. Bankruptcy Issues

Part 190 of the Commission's rules contains bankruptcy rules and priorities applicable to futures and futures options accounts on regulated markets. These rules facilitate the transfer and/or liquidation of positions, protect the clearing priority, and support cross-margining and other margining arrangements. How would exempted contracts be treated under the Bankruptcy Rules—for example, could a firm carrying positions only for "appropriate person" be treated as a commodity broker? If not, would customers of such firms be general creditors in the event of the firm's

[18] 58 FR 5580 (Jan. 22, 1993) (Final Rules for the Regulation of Hybrid Instruments); 58 FR 5587 (Jan. 22, 1993) (Final Rules Exempting Certain Swap Agreements); 58 FR 21286 (Final Order Exempting Certain Contracts Involving Energy Products) (April 20, 1993).

[19] Conference Report at 78.

[20] *Id.*

[21] Recently, Congress amended the Act to require floor traders—those individuals who trade solely for their own accounts on exchange floors—to undergo the same fitness checks and registration process as floor brokers and other industry professionals who directly deal with customer orders and funds. *See* 58 FR 19575, 19576 (April 15, 1993).

[22] The CME in its petition indicates that it is not seeking an exemption from those provisions of the Act proscribing fraud, embezzlement or manipulation, specifically, Sections 4b, 4o, 6(c), 6(d), 6c, 9(a) and 9(b) of the Act and Commission regulations 4.15, 32.9, 33.9 and 33.10. The CBOT proposes its own antifraud and antimanipulation rule, set forth above.

bankruptcy? Would the clearing organization have a priority relative to margin deposited by such firms? Separately, if an FCM had customers transacting both exempt and non-exempt business, would customers have a priority for regulated business and be general creditors for unregulated business? How would the exchange identify and inform these classes of customers concerning their rights and priorities, if any? How would permitting an FCM to have customers that transact both exempt and non-exempt transactions affect the ability to transfer accounts and assure that solvent customers' positions and payments to the market were uninterrupted in a market emergency?

5. Disclosure

The Commission's requirements with respect to disclosure were adopted in furtherance of the Act's antifraud prohibitions and provide standardized statements of material risks of futures and commodity option transactions. The duty to disclose material risks and other material information exists under the CEA's antifraud provisions, without regard to the specific disclosure requirements established by rule. If exemptions from the Commission's specific disclosure requirements such as Rule 1.55 were granted, how would FCMs and other intermediaries determine what disclosures would be required to be given to customers in order to avoid antifraud liability under the statutory antifraud prohibition or the proposed CBOT rule? Would potentially more disclosure than Commission-specified disclosure be required if no Commission standard existed? [23] Would the exchanges also eliminate special disclosures that may be required for specific products and markets? Would a disclaimer as to scope of regulation be appropriate?

6. Two-Tier Marketplace Issues

Neither petition would preclude the coexistence of markets limited to specified eligible participants and "public" markets not so limited. Would such a two-tier marketplace be consistent with the price discovery purposes and other functions of the futures markets as referred to in the CEA? [24] What effects, if any, on pricing or liquidity in the parallel "public" market may be anticipated from maintenance of an "institutional" or non-public market in the same contract? If an essentially unregulated institutional market results in significantly lower exchange costs than the "public market", as the CME and CBOT contend, how would these differential cost structures be reflected in transaction charges to market participants? Would such differential structures have potential anticompetitive effects upon any categories of market users? In a two-tier marketplace, would a "public market" remain large enough to be sustainable?

7. Financial Integrity

In varying degrees, the requested exemptions appear to assume that high-net worth and institutional participants do not need the financial protections of capital requirements and segregation of customers funds. [25] The proposals also suggest that both exempt and non-exempt transactions would be cleared through the same clearing corporations. Should this be permitted? If so, should the Commission use different criteria to approve clearing systems employed by the "professional trading markets" envisioned by the CBOT than those used to evaluate clearing systems for non-exempt Commission designated contracts? What risks, if any, would be created relative to the clearance of non-exempt transactions? Would this situation increase the financial risk for participants in non-exempt transactions? Would such a situation have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties regarding the integrity of the clearing system?

The requested exemptions would extend to the requirements of the CEA and Commission regulations concerning segregation of customer funds. If the exemptions were granted, should funds of customers engaging in exempt contracts be allowed to be commingled with proprietary funds of an FCM or other intermediary? Would such commingling of funds be consistent with the fiduciary status of an FCM to such customers under the CEA or the common law? On the other hand, if exempt contracts are differentially margined and subject to different financial protections, would it be appropriate to segregate them with regulated customer funds? Are the categories of eligible participants capable of evaluating the increased risks created by the absence of segregation?

The CME indicates in its submission that the Commission's segregation rules interfere with certain types of arrangements in which sophisticated customers engage in the OTC currency markets. Generally, what kinds of desired arrangements in this context are impeded by the current segregation rules?

8. Minimum Capital

The petitions also appear to contemplate that as the funds of customers engaging in exempt transactions would not be required to get segregated, they would not be included in the base amount on which an FCM's net capital requirement is calculated. As the net capital requirement is designed, in part, to protect the claims of customers to segregated customer funds, how would risks that might be created by exempt customers' accounts be addressed to assure that they do not result in increased risks to regulated customers' accounts? For example, should a special capital charge be assessed for open customer positions in exempt transactions? Should such special assessment be computed as if such positions were "naked" proprietary positions? What are the merits of the CME's position in its petition that a firm should be assessed no capital charge whatsoever for carrying this type of business?

9. Risk-Shifting and Price Discovery

The proposed professional market exemption sought by the CBOT places no restraints on the type of contract that can be either created as an exempt contract or converted to an exempt contract. The proposal does not include any mandated disclosure of price or transaction information. Should exchanges be required to provide some minimum level of transparency, *e.g.*, settlement prices, open interest, trading volume, etc., for exempt contracts or should provision of such information be entirely at the discretion of the exchanges? Is there any class of contracts where the exclusion of public customers in order to create an exempt market would be detrimental to the risk-shifting and price discovery functions of the regulated futures markets?

10. Speculative Limits

The Commission required as a condition of trading that each contract market establish speculative position limits. This requirement has been

[23] *See, e.g.*, The Options Clearing Corporation's "Characteristics and Risks of Standardized Options" disclosure document.

[24] In this regard, the Commission notes that it has approved rules, *e.g.*, GLOBEX volatility trading and various large order execution procedures, which allow some degree of bifurcated trading in regulated markets.

[25] The CME would retain Commission rule 1.17, regarding net capital requirements, but would not retain other provisions of the Act or Commission regulations regarding net capital and segregation. The CBT petition would not retain any regulatory requirements concerning net capital or segregation.

waived only where warranted by the liquidity of the markets or the adoption of alternative rules by the exchange. Would it be necessary to require speculative limits (or an alternative such as position accountability rules) for the proposed exempt contracts? Would there be any benefits of speculative limits under these circumstances?

11. Issues Involving Foreign Regulators

Any exemption granted by the Commission in response to the exchanges' petitions may have an impact on the regulatory treatment of U.S. contract markets by foreign jurisdictions. Certain jurisdictions (*e.g.*, the United Kingdom, France and Australia) require that, before their nationals may engage in futures and options transactions on non-domestic futures and options markets, an assessment be made that such non-domestic markets provide adequate investor protection. If the Commission exempted certain contracts from regulatory requirements, those jurisdictions may reassess whether the exempted markets were appropriate for all of their nationals or only certain categories of their nationals. What impact should these issues have on the Commission's consideration of the petitions?

B. Appropriate Persons

Should the Commission consider establishing an exemptive framework applicable to commercial participants in the commodity futures and options markets as requested by the CBOT in its petition or as set forth by the CME?[26] What requirements in the Act and Commission regulations that exist primarily or solely to protect the trading customer could potentially be eliminated without jeopardizing financial or market integrity?

Are the lists of "appropriate persons" set forth in the CME's and CBOT's petitions properly delineated or should they be supplemented or reduced? Should exchange members, as delineated in category Number 12 of both petitions, be included? Who will be responsible for enforcing these access requirements? Do they raise any competitive issues which should be addressed by the Commission in reviewing these petitions?

Are the net worth and total asset criteria applicable to corporations, partnerships, proprietorships, organizations, trusts and other business entities as described in the list of "Eligible Rolling Spot Participants" and "professional traders" set at appropriate levels? Are the persons and entities, *e.g.*, corporations or partnerships with $1 million net worth, within the categories of "Appropriate persons" set forth in the CME petition able to engage in over-the-counter foreign currency markets on the basis of their own credit? If credit support mechanisms are currently used by such persons and entities, what is the nature of these mechanisms and what types of entities make them available?

In light of the largely institutional composition of exchange-traded futures markets generally, what are the fundamental differences between exchange markets and dealers markets?

The two clearing firm defaults that have occurred during the past ten years (Volume Investors, Inc. and Lee B. Stern) were precipitated by trading by flood traders, who would qualify as "appropriate persons" under the petitions. How would the exchanges assure that trading by floor traders would not endanger the financial integrity of regulated firms, other intermediaries, or the clearing system in the absence of otherwise applicable regulatory requirements?

If the trading sophistication of floor traders does not preclude endangerment of the financial integrity of the firms through which they clear, on what basis can the Commission conclude that the sophistication of other participants precludes the need for financial protections? What protection should be maintained for non-appropriate persons transaction in the same markets and using the same clearing facility against potential losses cause by appropriate persons?

C. Ability To Discharge Regulatory and Self-Regulatory Duties

In granting exemptions, the Commission must determine that the exemption "will not have a material adverse affect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act."

1. Reporting Requirements

Both applications would have the Commission retain anti-fraud and anti-manipulation authority. The Commission's ability to enforce these proscriptions is, however, in part dependent on reporting requirements. In particular, the large trader reporting system is the Commission's primary tool for monitoring market concentrations and the potential for corners, squeezes, and other forms of manipulation. It is also used in on-going financial surveillance particularly during times of market volatility.[27] If the Commission were to retain anti-fraud and anti-manipulation authority, should reporting requirements continue to apply? If not, are there other market mechanisms or exchange rules that could substitute for the protections provided by reports to the Commission? If so, would it be sufficient to require the exchanges to maintain the necessary records for exempt contracts rather than requiring them to provide transactions and price data on a routine basis to the Commission?

As a general matter, is it appropriate for the Commission to issue an anti-fraud and anti-manipulation rule, as the CBOT has suggested, that is applicable to exempt transactions as opposed to simply reserving the general provisions of the Act and Commission rules in this regard?

2. Recordkeeping Requirements

Accurate books and records and reports of transactions and account equity not only enhance the Commission's ability to detect and prosecute fraud, but also enable customers to monitor the performance of their accounts and seek legal redress as necessary. In particular, purchase and sale statements and confirmations are necessary for firms and customers to monitor and manage risk exposure on a timely basis. Would customers, under the proposals, be completely dependent on their ability to negotiate recordkeeping obligations on a transaction-by-transaction or account-by-account basis? Is individual negotiation of such obligations a practical and efficient course of action? Commenters may wish to address the viability of governmental and private remedies and the effectiveness of an antifraud enforcement program, in a context in which FCMs and other intermediaries would have no enforceable obligation other than individually negotiated customer agreements to maintain accurate records.

What impact would potentially divergent recordkeeping practices have on the ability of the Commission to determine whether the terms of any

[26] The Commission notes that the laws of most countries with developed markets make some distinctions between different types of customers in the application of this regulatory regimes. *See* Survey on Differential Treatment of Customers, Division of Trading and markets, CFTC, presented at the May 25, 1993 meeting of the Commission's Regulatory Coordination Advisory Committee. Furthermore, the Commission has adopted customer- or participant-based distinctions in its regulations. *See, e.g.*, Rules 4.7 (commodity pool disclosure) and 32.4(a) (trade option exemption).

[27] In this connection, authority for large trader reporting was added to the securities regulatory regime by the Market Reform Act of 1990.

exemptive relief were being complied with, or on the ability of the clearing organization, the exchange, and the Commission to conduct financial surveillance and address systemic risk?

How would the Commission detect and prove wrongful conduct such as misallocations involving both unregulated contracts (for which fewer records might be maintained) and fully regulated contracts, when the same contract could be traded by both "appropriate" persons and those who do not qualify as "appropriate" persons? What potential impact on regulated futures market participants or eligible appropriate participants should be considered in evaluating the potential effect of an exemption from recordkeeping requirements, including audit trail requirements, for some futures contracts traded on an exchange that is a designated contract market for non-exempt contracts? Is there any problem from the perspective of market professionals in determining which records must be maintained using a fraud standard?

3. Audit Trail

An accurate audit trail is essential to detecting abusive practices and reconstructing market activity. In adopting the Futures Trading Practices Act of 1992, Congress emphasized the need for a reliable and detailed audit trail. Can the Commission grant an exemption from audit trail requirements without jeopardizing its ability, and the ability of customers, to detect fraudulent practices by floor brokers and traders? Have the exchanges made an adequate showing that the nature of the transactions or participants reduces or eliminates the need for a sound audit trail, with its concomitant recordkeeping requirements?

4. Federal Oversight of Self-Regulatory Organizations

a. *Generally.* The petitions appear to contemplate elimination of the statutory and regulatory provisions which effectuate federal oversight of exchange self-regulatory programs. (*See, e.g.,* Sections 5 and 5a of the Act and Rules 1.51 and 1.52). For example, the requested exemptions extend to Commission review of exchange rules, exchange responsibility for enforcing its rules, contract market designation, and operational requirements for exchanges. The petitions contemplate a regime under which the exchanges would hold no federally enforceable self-regulatory responsibilities under the CEA or Commission regulations, with the requested exemptions premised primarily upon the nature of the participants in the relevant contracts. If such relief were granted, could the Commission deny comparable relief to entities other than exchanges who may wish to provide facilities for futures or options transactions offered and sold only to qualified customers? What criteria should the Commission use in determining to whom to grant such relief?

b. *Contract terms.* A major portion of the Commission's efforts to prevent manipulation relies on the premise that market problems can be avoided through the appropriate specification of important contract terms. To that end, the Commission reviews contract terms both at the time of designation and when they are amended. With regard to the proposed exemptions, should the Commission retain the right to review contract terms before trading begins, approve subsequent changes in contract terms and conditions, and conduct emergency reviews or should the process be one in which a board of trade notifies the Commission of its intent to trade a transaction pursuant to the exemption it has been granted and then, absent objection, trades the contract?

5. Exchange Governance

The 1992 Act had as one of its purposes the establishment of "higher standards for service on governing boards and disciplinary committees of self-regulatory organizations." H.R. Rep. No. 978, 102d Cong., 2d Sess. 47 91992). These standards require meaningful representation on boards and disciplinary committees of diverse interests, including significant non-member and user representation. In addition, Commission Rule 1.63 prohibits persons with certain disciplinary histories from serving on SRO disciplinary committees, arbitration panels or governing boards for, in general, three years from the date of the disciplinary action.

Is it consistent with the purposes of the 1992 Act to grant an exemption from governance requirements with respect to some contracts traded on an exchange that is otherwise subject to such provisions? If such an exemption were granted, would the maintenance of differential standards for service on the exchange's disciplinary committees addressing conduct involving exempt contracts adversely affect participants in the exempt contract or public confidence in the marketplace as a whole? Would it be consistent with the public interest for persons who would otherwise be disqualified from board or disciplinary service to participate on such boards or committees with respect to matters involving an exempt contract?

6. Emergency Actions

Should exchanges be granted an exemption from Section 8a(9) of the Act? How would emergency actions involving exempt contracts be handled as a matter of exchange governance?[28] Would the sophistication of participants trading in an exempt contract diminish the need for assurance that emergency actions are undertaken by members or other persons without conflicting interests? Would the Commission, in accordance with Section 5a(a)(12) of the Act, be required to report to Congress on exchange emergency actions in a two-tier market where the price of a commodity underlying both an exempt and a regulated transaction could be affected regardless of the nature of the participant? If so, how could the Commission grant an exemption from informational requirements relative to its emergency rules for exempt transactions?

7. Private Rights of Action—Standard of Liability

Section 22 of the CEA generally specifies a "bad faith" standard to be applied in a priviate action against an exchange for failure to enforce its rules. What would be the impact of granting the requested exemptions on the standard of liability for exchanges and their officers, directors, governors, committees, and employees in this regard?

* * * * *

In addition to comments addressing the specific questions set forth above, the Commission is interested in receiving comments concerning any other issues that would assist in its consideration of the petitions. To the extent practicable, comments on specific issues should address any differences between the two petitions.

Issued in Washington, DC, on August 10, 1993.

Jean A. Webb,

Secretary of the Commission.

Chicago Mercantile Exchange
April 7, 1993.

Ms. Jean A. Webb,
Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581

RE: Petition for exemption from The Commodity Exchange Act for Rolling Spot Currency Futures and Option.

Dear Ms. Webb: The Chicago Mercantile Exchange ("Exchange" or "CME") hereby petitions the Commodity Futures Trading

[28] If such an exemption were granted, would state or federal antitrust laws then apply?

Commission ("Commission" or "CFTC") for exemption from certain provisions of the Commodity Exchange Act for the class of contracts known as "Rolling Spot Futures Contracts™," as well as options on those contracts. These instruments: closely mirror common cash market instruments now traded in the over-the-counter (OTC) market; provide many economic advantages over the currently available OTC instruments; and, if allowed to operate with regulatory parity, would provide considerable benefits in terms of costs, price transparency, and counterparty credit exposure to the current users of these instruments.

The Exchange notes that on October 28, 1992, the Futures Trading Practices Act of 1992 ("1992 Act") was signed into law. This legislation added new subsections (c) and (d) to section 4 of the Act. New section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any agreement, contract, transaction, or class thereof, from the exchange-trading requirement of section 4(a) or any other requirement of the Act other than section 2(a)(1)(B). New section 4(c)(2) provides that the Commission may not grant an exemption unless the instrument or class of instruments in question will be entered into solely between appropriate persons listed in new section 4(c)(3), and the Commission determines that instrument or class of instruments will not have a material adverse affect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.

The motivation of Congress in including this new exemptive authority in the 1992 Act is clear. Section 4(c)(1), 7 U.S.C. 6(c)(1), reads as follows:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any persons, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction) either unconditionally or on stated terms of conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) or from any other provision of this Act (except section 2(a)(1)(B)) if the Commission determines that the exemption would be consistent with the public interest.

The petition of the Exchange falls squarely under Congress' intent to promote financial innovation and competition. Rolling Spot Futures and Options Contracts are an important innovation that reduces the costs and risks of spot foreign currency transactions. As will be detailed below, the Exchange believes that the natural market for these products will be "appropriate persons" and will restrict the use of the products thusly. Finally, the Exchange believes, from its long experience dealing with sophisticated commercial customers, that the provisions of the Act designed to protect less sophisticated traders are not necessary and are an expensive burden to the customers that will trade the Rolling Spot Futures and Options Contracts. Therefore, if the Commission fails to grant an exemption to Rolling Spot Contracts, it would be doing so in contradiction to Congress' intent to promote innovation and competition.

The Commission has recently used its newly granted authority to exempt both swaps and hybrid Securities. It has a proposal outstanding to further exempt trading in energy contracts by commercial participants in the oil and gas industries. The Commission also takes the position that the OTC market in foreign currency forwards, futures and rolling spot transactions is exempt from CFTC regulation.

The massive OTC market in the instruments to which this exemption applies is operating apart from CFTC jurisdiction and with no significant regulation of its trading or sales practices. Granting the Exchange's petition would be a recognition that the Chicago Mercantile Exchange is an important innovator and provider of services to the entire financial community. Allowing exchanges to compete on equal footing with banks and currency dealers in providing products to commercial customers is an important step that will benefit these customers as new, cost-effective products and services are provided.

The structure of this petition will be as follows:

I. The Rationale for Rolling Spot Contracts
II. Implications of Exemption
III. Summary of Rules for Rolling Spot Contracts

Each section will help justify why the Exchange's Rolling Spot Contracts should be exempt from key provisions of the Act.

I. The Rationale for Rolling Spot Contracts

The foreign exchange market is dominated by spot transactions that typically call for two-day settlement and delivery. This practice, which has been standard for decades, is the cornerstone of one of the most liquid, actively traded markets in the world. Despite phenomenal growth in the past decade, the operational aspects of the spot currency market have not changed significantly. Bilateral netting of positions going to delivery was considered a major innovation in the 1980's. Plans for more ambitious multi-lateral clearing and settlement have been discussed at some length, but little actual progress has been made. The foreign currency market today remains an operations intensive mechanism that could be greatly improved.

One major impediment to progress is, ironically, the competition that exists among participating banks. Bilateral netting of positions has evolved because it was in both parties' best interest to avoid the expense of duplicative deliveries. Multilateral netting, however, adds a broader credit question to the decision. If banks of different credit quality participate in a multilateral scheme, there is a degree of credit sharing across the banks. The triple-A rated participating banks would end up subsidizing the credit standing of lower quality institutions, and in turn, make them more competitive. Consequently, the highest-rated banks are reluctant to participate in such schemes. Consortia of lower-rated institutions are also unlikely to work, since by omitting the trades with higher-rated banks a significant fraction of the incremental operational savings over bilateral netting would be lost.

In addition to clearing and settlement issues, there are operational expenses to be considered. Every trade in the cash market is a "ticket" and typically fees are charged on a ticket-by-ticket basis. While modest on a per trade basis, the total cost can be quite staggering when the volume of currency business done today is considered. Traditionally, bank currency-traders were not responsible for their costs, but increasingly, cost-conscious banks have begun to charge back these operational expenses to stimulate trading desks to generate net as well as gross profits.

Clearing, settlement, and operational efficiencies have long been strengths of the nation's futures exchanges. The Rolling Spot contracts described below bring together these strengths and combine them into a package designed to serve the cash market currency trader. The benefits available from such a product are vast, but only realizable if the instrument is traded in a fashion consistent with current cash market practice. For these reasons, an exemption under section 4(c)(1) is required.

This section of the petition begins with a detailed description of current cash market practices, focusing on the process by which spot transactions are "rolled forward" on a day-by-day basis. Rolling Spot Futures contracts are then described, and shown to provide clearing and operational advantages over current practice.

A. Cash Market Practices

Of the nearly one trillion U.S. dollars that are turned over daily in the foreign exchange market, approximately 58 percent are for spot delivery in two business days.[1] A significant amount of this trading is rolled forward using currency swaps for a subsequent delivery or value date (The value date is the day on which physical currency transfers are made between the principals to the trade). This forward roll process usually is done on either a "tomorrow/next" or a "spot/next" swap basis. Foreign currency traders who decide to roll the spot trade forward as of the same day that the trade was originated, will do so using a "spot/next" swap. Foreign currency traders who decide to roll the spot trade forward as of the business day following the date on

[1] The "Survey of Foreign Exchange Market Activity" published in February 1990 by the Bank for International Settlements (BIS) estimated that in April 1989 "[T]otal reported gross average daily exchange market turnover for the eighteen industrial countries and three Middle and Far Eastern financial centers that supplied data amounted to over $930 billion." Of the over $930 billion U.S. dollar equivalents traded daily, over $540 billion (equal to 58 percent) was traded on a spot basis. Updated currency turnover statistics for April 1992 are expected from the BIS in Early 1993.

which the trade was originated, will do so using a "tomorrow/next" swap.

The value of this swap is determined by the marketplace as it constantly looks for arbitrage opportunities across spot and forward foreign exchange rates and the short-term credit markets of the countries in the foreign exchange transaction. For example, if the spot rate for pound sterling is $1.55, and British interest rates are higher than U.S. interest rates for any maturity, any forward rate will be at a price lower than $1.55. The difference between the spot and forward rates is directly related to the interest rate differential, and is closely monitored by all foreign exchange participants.

Pound Sterling/U.S. Dollar Spot Trade Rolled Forward One Day

Suppose on Monday a Citibank trader buys £10 million for $15.5 million dollars from a Chase Manhattan Bank trader for value date Wednesday (rate is 1.5500 US$/£). Over the course of the day, the Citibank trader decides to keep his position open another day. The Citibank trader does not want to take delivery of £10 million on Wednesday, so the Citibank trader wants to roll the position over until Thursday.

Later in the day on Monday, the Citibank trader calls a Morgan trade and does a "spot/next" swap trade to defer the obligation to pay dollars for pound sterling to Thursday from Wednesday. The Morgan trader quotes the Citibank trader his "spot/next" pound sterling/U.S. dollar swap market of ".25 at .50 pips" (which means .25 pips bid at .50s pips offer). A "pip" or "point" is .01 of a cent in the sterling market. The Citibank trader takes the Morgan trader's "spot next" offer at .50 pips, and the Morgan trader and Citibank trader agree as to the spot rate they will use (1.5500 US$/£). This "spot/next" trade in effect means Citibank is selling sterling it originally would have received from Morgan on Wednesday at the spot rate 1.5500 US$/£ and buying it back from Morgan on Thursday at the agreed upon one business day forward rate of 1.55005 US$/£.

Cash market traders do not necessarily decide on Monday to roll the spot trade (for value Wednesday) to the next value date. Typically, cash market traders wait to decide to roll until after viewing their cash balances the next morning, Tuesday in this example. In this more usual case, the dealer with the open spot transaction for value Wednesday does a "tomorrow/next" or "tom/next" trade on Tuesday. Operationally, on Wednesday and Thursday the "tom/next" trade done on Tuesday looks identical to a "spot/next" trade done on Monday. Quoting practices for "spot/next" and "tom/next" trades are not standardized, but may be quoted in units as fine as .10 swap points (also know by some as "pips").

B. The CME's Innovation

The CME Rolling Spot contracts incorporate an innovative feature to automate the one-day forward roll as described in the example above for any rolling spot position that remains open as of each day's close. Unlike the interbank spot market that requires physical currencies to move between parties involved in swap transactions, the Rolling Spot contracts allow the open spot positions to be rolled forward without the back office compliance of arranging currency transfers. Instead, in addition to the daily mark to market of all open Rolling Spot positions to the day's settlement price, open Rolling Spot positions will have a daily adjustment.

In order to do the daily adjustments to roll the spot positions forward, the CME Clearing House will randomly survey eight dealers in forward currencies ("reference dealers") at 11:00 AM each day to get their current bid and offer for spot/next forward swaps. These quotes must be confirmed in writing (via Reuters Dealing Terminals, telex, facsimile, etc.) before the CME will use them in the survey. The CME Clearing House will calculate the midpoint of each bid and offer quote pair, discard two highest and two lowest midpoints, and average the remaining four midpoints, rounding the resulting mean to .01 swap points, which equals $0.25 in the case of the British Pound Rolling Spot contract. The Spot/Next Swap Point will be posted promptly on the CME Trading Floor and disseminated over the ticker as soon as is possible after the 11:00 AM survey is completed and the calculations are made and verified. Then after the close for the day, if the Swap Point indicate that the forward currency is at a premium, then each open long position will be debited the Swap Points and each open short position will be credited the Swap Points. If the Swap Points indicate that the forward currency is at a discount, then each open long position will be credited the Swap Points and each open short position will be debited the Swap Points. Consider the following example. If the Spot/Next Swap Points for pounds sterling were determined to be 2.01 discount swap points, (i.e. the one-day forward is trading at a price of 2.01 points below spot) or $.000201 per Pound Sterling, then each long position would be credited $50.25 and each short position would be debited $50.25.

The CME selected "spot/next" swap quotes rather than "tom/next" swap points for operational reasons. If the Exchange were to use "tom/next" swap points, the survey would need to be conducted at 6:00 AM or 7:00 AM on the next business day. Operationally, "daily adjustments" could not be made prior to the opening of trading the next business day if the survey were done only minutes before the open. By using "spot/next" swap points, the Exchange is able to do the survey at 11:00 AM Central Time on the same day that the "daily adjustments" are to be applied. Also, by doing the survey at 11:00 AM Central Time, the Exchange can include Chicago, New York City, and London banks in its survey of "reference dealers," and any market participants, who do not want their Rolling Spot positions rolled at a given day's Spot/Next Swap Points, can offset their positions in the trading pit before the close or do an exchange for physical (EFP) transaction.

The operational differences between the CME Rolling Spot Futures Contracts and cash market practice are intentional and are designed to provide advantages over current interbank practices. There are three areas of improvement:

1. Cost of operation
2. Timeliness of payments
3. Mutual offset and clearing house guarantees

Each of these features can be seen as a natural step in the evolution of cash currency trading to reduce costs and improve the safety of the market.

Operational costs are reduced in two ways. First, in today's world, every roll of a cash market position is viewed as a new transaction, and consequently is charged a new back office processing fee. While individually modest in size, these fees can accumulate into a significant sum.

The second operational savings comes from the price at which positions are rolled. Suppose the Swap Points were quoted at 2.25 points bid, offered at 2.50 points. Depending on the initial position of the individual seeking to roll, the ultimate charge would be the bid or the offer. With the CME Rolling Spot, the daily roll occurs at the midpoint (in this case 2.375 which would be rounded to 2.38). This difference means a $3.00 savings per contract for someone who would have rolled the position at the bid. Again, this sum may not seem great, but in an industry that trades hundreds of billions of dollars daily in this fashion, the total can be quite large.

The second improvement comes from the timing of payments. In the interbank market, whenever a forward contract is offset by an opposite transaction, the gains or losses are realized on the scheduled delivery date. For a spot trade, this would be in two days, but for a forward trade of any significant length, the delay could be weeks or months. With a Rolling Spot Futures Contract the net payments are made in cash on the day after the position is closed out. This offers many advantages in terms of timeliness of payments, use of funds and, ultimately, the security of the system.

The third key operational advantage comes from the mutual offset features of the Clearing House. In a cash trade, positions can be only truly offset by an opposite trade with the original counterparty (and as mentioned above, even then the offset is complete only on the delivery date). Positions may be economically offset by taking an opposite position with another counterparty, but there always remains a chain of credit relationships that poses risks until the point that all deliveries are complete.

Rolling Spot Positions established and liquidated at the CME offset automatically, and are not dependent upon the counterparties at all. The CME Clearing House will ultimately act as the buyer to every seller on the Rolling Spot futures, and conversely, just as it does for existing products. This feature accomplishes economies in deliveries. There are no deliveries for positions that are offset, and ultimate deliveries are netted down to the minimum amount necessary. Further there is the advantage of minimizing credit exposures that accumulate in the cash market. Once positions are offset, credit lines are freed up and capital can be redeployed. Each of these features is a source of increased efficiency and savings over the current cash practice.

C. Conclusion

The daily adjustment process for Rolling Spot contracts will thus synthetically mimic usual spot market practices without the complications and costs of frequent physical deliveries of currencies. Additionally, the daily adjustments will ensure that Rolling Spot contracts are priced similarly to spot currency, without the discount or premium usually associated with currency forward or futures contracts. The CME has provided an innovation that builds on and improves standard cash market practice.

II. Implication of Exemption

The CME recognizes that Congress had several specific intentions in crafting the Commodity Exchange Act. Primarily, public customers were to be protected, but it is also an important aim of federal regulation to ensure that price discovery in the markets should not be impaired. Public customers should be protected from deceptive sales practices, and manipulation of prices is to be prevented to protect both the direct participants and those in the public who might use prices discovered in the futures market to guide their commercial decisions. The Exchange shall demonstrate in this section how an exemption to the Act for Rolling Spot Futures Contracts and options on those futures will not compromise Congress' original public policy aims, and, in fact, will promote the kind of competition Congress purposely tried to foster with the Commodity Futures Trading Practices Act of 1992.

A. Customer Protection

Congress' first policy aim, the protection of public customers, is met by excluding from participating in the Rolling Spot Futures and Options any individual who is not a sophisticated investor or who fails to represent a firm trading currencies as part of its business practice. In selecting who might be included as a qualified participant, the Exchange is guided by the Commission in its recent decisions to exempt swaps and hybrids from the Act.

The CME proposes to define "Eligible Rolling Spot Participant" to be limited to the following persons or classes of persons:

(1) A bank or trust company (acting on its own behalf or on behalf of another eligible Rolling Spot participant);

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. § 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an Eligible Rolling Spot participant;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an Eligible Rolling Spot participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an Eligible Rolling Spot participant (a) which has total assets exceeding $10,000,000 or (b) the obligations of which under currency transactions (including but not limited to spot, forward, option and/or swap transactions) are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (6)(a) or by an entity referred to in paragraph (1) (2) (3) (4) (5) (7) or (8); or (c) which has a net worth of $1,000,000 and enters into the Rolling Spot futures or options contract with the conduct of its business; or which has a net worth of $1,000,000 and enters into the Rolling Spot futures and options contract to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. § 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. § 78 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another Eligible Rolling Spot participant: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of (6) or (11) of this section;

(10) A futures commission merchant subject to regulation under the Act of a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another Eligible Rolling Spot participant: *Provided, however,* that if such futures commission merchant is a natural person or proprietorship, the futures commission merchant must also meet the requirements of subsection (6) or (11) of this section;

(11) Any natural person with total assets exceeding at least $10,000,000; or

(12) An exchange member at the CME, trading on his or her own behalf or on behalf of another eligible Rolling Spot participant.

The first eleven entries in the above list are direct analogs to the schedule of eligible swap participants recently approved by the Commission. The rationale for this duplication is that the same firms and individuals that deal in swaps also actively participate in the cash and forward currency markets. In fact, currency swap customers and providers are expected to be prime users of the Rolling Spot futures and options. Their motivation for trading and their capacity for making informed decisions about the market and the vehicles are well established.

Congress' concern about the protection of public customers does not apply to this group, because they have demonstrated their abilities to operate in the cash currency market without Federal oversight. By restricting access to Rolling Spot futures and options to this group, the CME has created a pool of potential traders that would not benefit from the protection offered by the CFTC regulation (otherwise, there would be a public policy argument for the CFTC to regulate OTC foreign currencies, hybrids and swaps).

The only addition to the list that was approved in the swaps exemption is item 12, CME members acting either in the capacity as agent for customers or as traders for their own account. This group is essential to provide both brokerage services and liquidity to the Rolling Spot Contracts. There should be no concern that these individuals are unsophisticated and require the CFTC's protection. Nor should there be a concern about financial wherewithal since every trade done by a local or a broker is guaranteed by a clearing member of the CME that has met stringent financial standards.

The nature of the approved customer list is such that the benefits of consumer protection provided by the Act simply are not required. The risks of Rolling Spot contract are well understood by all of the allowed participants. Disclosure documents and similar requirements that provide this information to the public customer are worse than superfluous for these products. They represent a bureaucratic, expensive step that epitomizes the regulatory costs of trading futures that are completely absent when these sophisticated customers trade comparable instruments in the OTC market. For all of these reasons the Exchange firmly believes that an exemption to the consumer protection sections of the Act is warranted once access to the products is restricted to the set defined above.

B. Price Discovery

Price discovery is also an area that should pose no difficulty if Rolling Spot Futures and Options are exempt from the Act. The spot foreign currency market involves hundreds of billions of dollars in trading daily. Indications of spot and forward rates are available from a myriad of sources, and price information from the CME floor will contribute just a fraction of the total market data which is continuously available.

There is no public objective served in regulating Rolling Spot Futures and Options Contracts to protect price discovery in currencies. In the extreme, the Exchange could choose not to publish prices from these trades without degrading the ability to determine values in the overall market, since it is almost certainly the case that Rolling Spot Futures and Options will represent a small fraction of the total business done worldwide. In fact, the vast majority of all transactions done today are not publicly

reported, yet the markets are quite transparent.

Today, many, but not all, firms that make markets in foreign currency distribute indicative bids and offers. There is almost no dissemination of actual transaction data, but this is less important to a prospective customer than a view of where a transaction might take place. Price discovery in this market is quick, accurate and provided at a modest cost. If an individual bank adds its quotes to this stream, there is not a material improvement in the quality of information.

The CME Rolling Spot Contracts can be viewed in a similar way. Data on Rolling Spot transactions are expected to be provided to the public as a means to advertise the availability of the market. The information that is carried in that data will probably have the same marginal impact on the total pool of information as would adding a large individual bank to the total interbank stream. While it is always nice to have this information available, the process of price discovery in currencies will not be affected in any material way.

When Congress mandated that exchanges widely disseminate information about market transactions, it had two goals in mind. First, for many agricultural and some financial markets, the published futures prices provide the key piece of public information on which allocation decisions are made by participants in the cash market. Removing these futures prices would make it more difficult for a cattle feeder to make accurate supply or marketing decisions or to evaluate the quality of a local packer's bid for finished steers. In this function, futures prices provide a public benefit that extends well beyond the immediate users of the futures market.

The second function that is served by the prompt dissemination of futures prices is the leveling of the informational advantage that might be held by the local participants in the market. By quickly disseminating futures prices, outside participants, who do not necessarily have good access to other sources of market data, are provided a measure of parity with both locals on the floor and cash market traders who have many sources of information at their disposal.

With the Rolling Spot contracts, the list allowed participants includes only those individuals and firms that either already have excellent access to the market data, or have the resources to acquire it. There is no public benefit provided in mandating the subsidy of wealthy individuals or firms in the form of free data. All of the participants are on as equal a playing field as they are today in the OTC currency market. Mandated price dissemination of Rolling Spot contracts is not necessary.

However, as previously mentioned, the CME intends to collect and disseminate Rolling Spot trade data just as we do for all of our other products, but we believe strongly that we should not be *required* to do so. The economic advantages today of advertising our market through transaction price dissemination may at some point give way to a desire to advertise current bids and offers. Depending on the needs and desires of the participants, the information flow may change through time in ways not contemplated by the Act or the specific regulations pertaining to this area. For all of these reasons, an exemption is being requested.

C. Fraud and Manipulation

There is a little chance that the Rolling Spot contracts can ever be manipulated given the size of the underlying cash markets and the incredible quantity of capital that is dedicated to trading and arbitraging these markets. Nevertheless, if an individual were to use a Rolling Spot contract as a vehicle to intend to create an artificial price, or as an instrument in a financial fraud, there would logically need to be a mechanism to control and discipline this behavior.

For many firms and individuals on the approved customer list, anti-fraud provisions in their own regulatory scheme or in state statutes would provide this coverage. However, for some on the list, the anti-fraud provisions of the Commodity Exchange Act are the most logically applies. Moreover, in the area of manipulation, it is the Act that provides clearer guidelines for this specific activity than any other provision in Federal law. Consequently, the Exchange is not requesting an exemption to sections 4(b) or 9(a) or (b) of the Act covering fraud, embezzlement and manipulation.

D. Financial Safeguards and Systemic Risk

There are three key dimensions of the regulation of customer funds that are addressed in the general regulations under the Commodity Exchange Act. The first requires customers' funds to be segregated and separately accounted for (Regulation 1.20). The second frames a set of requirements of record keeping (Regulations 1.31 through 1.37). The third attempts to address financial risk through capital requirements (Regulation 1.17). This section will demonstrate how these regulations are not required for the smooth and safe functioning of the Rolling Spot Futures Contracts as they have been proposed or the market on which they will trade, and that these contracts should be exempt from these regulations.

Segregated funds are required under Regulation 1.20 for all commodity and option customers. Regulations 1.21 through 1.29 further define restrictions on the treatment and documentation of these customer funds. The motivation behind these rules is the protection of customer monies in the event of a default in the house origin by the customer's FCM. The idea is that by clearly identifying and segregating the customer funds, there is no opportunity to commingle funds and to apply those customer monies to losses by the firm.

The current customers of the interbank currency market have no such provisions for segregation of accounts. Relationships with banks and currency brokers involve credit risk and are entered into voluntarily with the understanding that credit balances that have accrued to the customer's account would be in jeopardy should the firm declare bankruptcy. This risk varies, of course, depending on the maturity of the instrument. Long-dated forward contracts can pose a great deal of risk, while spot contracts that actually deliver in two days have very little. Swaps and spot positions that are rolled forward without a marking to market have a risk somewhere between spot and forward.

Customers and exempt Rolling Spot contracts at the CME will not be allowed to have their Rolling Spot positions in segregated funds. There are two main reasons for this restriction. First, the majority of customers are accustomed to this status for their OTC currency accounts. If these positions were in the segregated pool, the restrictions in Regulations 1.21 through 1.29 would interfere unnecessarily with the private arrangements that develop between the sophisticated customer on the approved list and their FCM firm that may also be acting in the capacity of banker or currency broker.

The second reason to keep Rolling Spot Futures and Options out of the segregated funds pool is to isolate exempt positions from the accounts of all other regulated futures and options customers. The Exchange believes that every position in the segregated funds pool should be on a regulated futures or options contract. Presently, OTC positions are not allowed to be in segregated funds, in part because those positions are not subject to the same rules and regulations as the futures accounts. Customers who are in the segregated pool are at risk from other customers in the pool. Therefore, it is essential that if there were to be a default in the customer origin that put other customers at risk, it should be from trading in a fully regulated futures or options position.

The other side of this coin is that the Rolling Spot customer may not want to have his or her funds commingled in the customer funds origin because they believe the risks of a major default from another customer at the FCM puts their funds at greater risk than any problem that might arise from the house origin. While these risks are very remote, the CME Clearing House does have clear legal claim to all the funds in the customer origin in the event of a customer default that is not covered by the firm. In such an event, whether the customer's funds were segregated or not, they would be in jeopardy. The sophisticated customer, realizing this, may believe that the benefits of segregation are minimal relative to the costs posed by restrictions. Outside the segregated pool there would be alternatives like trust arrangements that would give considerable protection in the event of bankruptcy. This could be a particularly attractive feature for pension funds or other organizations facing considerable fiduciary constraints. The Exchange believes these kinds of credit and risk evaluations are regularly made by the allowed participants in their interbank dealings. These sophisticated participants should be able to exercise their judgment in this area as well.

The Exchange further believes there is only one situation where having Rolling Spot Futures or Options accounts in segregated funds poses any significant advantage. This is when a CME market maker or customer is trading between Rolling Spot contracts and traditional CME currency contracts. Profits in one area will largely offset losses in another. If the positions were in the same account,

profits and losses would flow automatically between the positions. While convenient, this feature is hardly essential since transfers between segregated and non-segregated fund accounts are always possible. The fact that all of these positions are marked to market daily eliminates any financing issues that frequently arise between futures and current OTC products.

For all of these reasons the Exchange is requesting exemption from Regulation 1.20, which requires the accounts of all commodities and options customers to be placed in segregated funds. The Exchange believes that current futures customers and customers trading Rolling Spot Futures and Options are all made better off by restricting the latter group to be outside the segregated funds pool.

Various record keeping requirements are enumerated in Regulations 1.31 through 1.37. The primary purpose of these rules is to provide complete trade information to the public customer in a prescribed format. Additional requirements are placed on the FCM's and floor traders describing the types of information on each transaction that must be recorded. The Exchange, in seeking exemption from all provisions of the Act except those pertaining to fraud and manipulation, requests an exemption in this area also. Given the nature of the regulations, additional comment is warranted on why an exemption will not prove counter to the public interest.

Regulations 1.32, 1.33, 1.34, 1.36, and 1.37 all pertain to record keeping regarding monthly statements, "point balances," the daily accounting treatment of segregated funds, and similar topics. As in the discussion of segregated funds, the allowed participants in the Rolling Spot Futures and Options do not require a government mandated format for account statements or other similar steps taken to protect less sophisticated customers. Information on their account activity will be available in virtually any format they desire, because the commercial nature of the business will dictate what information is necessary and how frequently reports are made. It is the common practice today for banks and currency brokers to satisfy the demands of their customers for information, or else face the potential loss of those accounts. Given the sophisticated nature of the allowed participants, this market discipline is all that is required to ensure accurate and timely information is provided to the customers.

Regulation 1.31, would appear to be generic in that it simply defines the process by which records and books required by the Act are kept and made subject to inspection. The Rolling Spot Futures contracts, once exempted from the provisions of the Act and its Regulations, should not have the same reporting requirements, so by extension Regulation 1.31 does not apply. However, it is mentioned here to emphasize two points. First, that record keeping requirements are essentially customer protection measures and second, that commercial firms involved in OTC foreign currency routinely maintain business transaction records for a variety of reasons, independent of any regulatory requirement to do so.

Sophisticated customers know how to evaluate counterparties, and their financial resources allow them to invest in as little or as much investigation as they choose. Just as in the section covering customers account reporting, the allowed participants will select counterparties or agents according to a variety of criteria. An important factor in their decision is the professionalism and thoroughness of their operation, which includes record keeping. The requirements in Regulation 1.31 may be perceived as unnecessary or they may be viewed as inadequate. In either case, satisfying Regulation 1.31 for trades involving Rolling Spot Futures and Options is neither necessary nor desirable.

It is a telling feature of Regulation 1.31 that records must be available to representatives of either the CFTC or the Justice Department. The reference to Justice reminds us that for commercial transactions, including currency swaps, forwards and OTC options, there are protections against fraud in the criminal code. Exempting Rolling Spot Futures and Options from the Act and its Regulations does not eliminate all protection for the counterparties. It simply places these instruments on the same footing as other widely used currency products that are not covered by the unique provisions of the CFTC regulations.

Record keeping requirements for FCM's, IB's and exchange members enumerated in Regulation 1.35 are also designed to protect public customers who might not have the experience, knowledge or resources to detect and prevent abusive behavior with respect to their accounts. In requesting an exemption from this requirement, the Exchange would not be abandoning its commitment to provide a fair and orderly market, but is merely requesting that the plethora of detailed regulations enumerated in Regulation 1.35 to protect unsophisticated public customers not apply to the trading of Rolling Spot Futures and Options.

Regulation 1.17 defines the minimum net capital requirement for FCM's and IB's. The cornerstone of this regulation is that four percent of the customer segregated funds is the minimum necessary in capital, unless the firm is also a securities broker or dealer and the SEC net capital requirement is higher. The acknowledged purposes of this rule are both micro and macro. Firms with adequate capital are less likely to fail and jeopardize their customers' funds, and they are less likely to impose catastrophic losses on the clearing firms with joint responsibility for the system. It is therefore for both customer protection and systemic risk issues that capital rules are devised.

The rules under Regulation 1.17 are believed by many to have serious deficiencies. Two firms could have identical customer origin positions. The firm that has more customer money on deposit, and is therefore facing less economic risk, is required to have the higher level of capital. Because of his perverse feature, firms sometimes encourage customers to "sweep" their accounts of funds in excess of the minimum performance bond required.

The Exchange is not seeking an exemption to Regulation 1.17, since all customer segregated funds will be used to calculate the four percent requirement. We are, however, confirming that Rolling Spot accounts, which are not in segregated funds, will not be included in the base on which the capital requirement is calculated. We will demonstrate why keeping Rolling Spot Futures and Options out of segregated funds will neither pose customer protection issues, nor add to systemic risk.

The logic of the customer protection issue is identical to that already discussed in the first part of the section. Customers from the approved list can evaluate the credit worthiness of their counterparties and their agents adequately without any government guidelines. If a customer places his or her Rolling Spot Futures and Options account with a firm, outside of the customer segregated funds pool, it is in part because of his or her belief that the firm is sufficiently well capitalized to protect his or her financial commitment. The CFTC guidelines are not viewed as necessary to insure this level of comfort and security.

Nor should failure to include these accounts in segregated funds materially affect the likelihood of loss by other customers caused by the failure of the firm. Today, there is outstanding in currency forwards, swaps and spot transactions many multiples of the currency futures open interest at the CME. These accounts are held by banks, currency dealers, and other firms who often also maintain FCM's. Today it is the norm for customers to open accounts for OTC currency transactions, sometimes in addition to, but often in lieu of currency futures accounts. Each of these firms maintains capital against these positions, but the guidelines are frequently less restrictive than what Regulation 1.17 prescribes for segregated funds accounts. It should also be noted that few of these OTC currency spot or forward transactions are collateralized, so they are in some ways riskier than comparable-maturity futures which have both original performance bond and daily variation payments.

Adding a Rolling Spot Futures and Options position to a firm's books outside of segregated funds poses no more risk to the firm or its customers than adding a comparable OTC product, a practice that occurs every day without causing a change in Regulation 1.17 capital requirements. Customers who are in the segregated funds pool are still protected in the event of a problem in the firm's house origin or among its non-segregated funds accounts. There is simply no customer protection issue that needs to be addressed through Regulation 1.17 type requirements.

Systemic risk is similarly unaffected. Some might try to argue that four percent of all customer funds relating to Rolling Spot Futures and Options, whether they are in a segregated state or not, need to be available as capital to enhance the system's ability to handle risk. This view would be an admission of terrible ignorance of what the sources of risk to the system are. Swaps, forwards, spot and OTC option transactions dwarf currency futures on most FCM's books. This OTC business has grown and prospered, serving a sophisticated customer base with

efficiency and security. Does the CFTC believe that the system is less safe in some dimensions because of these outstanding obligations? Since to date there has been no attempt to require FCM's to provide for extra capital among Regulation 1.17 lines for these positions, the answer must be no. Capital requirements, like those devised by the Bank for International Settlements or other jurisdictions or by SRO's must be viewed as providing sufficient protection for the system. Adding Rolling Spot Futures and Options to the non-segregated funds pool adds nothing new to the landscape that has not already been introduced by hundreds of different OTC currency products.

It has been shown how with customer Rolling Spot Futures and Options positions out of the segregated funds pool, the failure of Regulation 1.17 to apply to those funds will not hinder customer protection, detract from a firm's ability to perform its function, or add systemic risk. For Rolling Spot Futures and Options to offer a viable alternative to OTC market alternatives, the elimination of the segregated funds and consequent capital requirements must be an integral part of the process. For all of these reasons an exemption is requested and justified.

E. Position Limits

Section 4a of the Act deals with speculative position limits for futures and options under the CFTC's jurisdiction. In general, all contracts are required to have speculative position limits in order to reduce the chance of unreasonable fluctuations or unwarranted changes in price. In the last few years the Commission has allowed some exchanges to substitute position accountability rules for speculative position limits in commodities with extremely liquid cash markets and where the probability of manipulation or disruption is low. The major currencies at the CME were the first futures and options to be afforded such treatment.

It may appear that position accountability standards would be suitable for Rolling Spot Futures and Options as well, but this conclusion ignores the way business is transacted in the OTC world. When the CFTC exempted swaps and hybrids from the Act early in 1993, speculative position limits were not an issue. In the world of OTC products all positions are entered into by informed, sophisticated parties, constrained only by the financial limits each faces. The Commission implicitly recognized that the cash markets, independent of the futures, do not require Federally imposed regulations designed to minimize disruptive behavior. In a market comprised of sophisticated traders, everyone is equipped to judge the market and his or her own capacities. The situation for Rolling Spot Futures and Options is identical to the OTC currency market in this regard.

Exemption from Section 4a of the Act should be granted because that is the consistent way to treat Rolling Spot Futures and Options. Further, there is nothing about the foreign currency markets that would suggest that a different course would be in the public interest. The markets are among the largest and most actively monitored in the world. Discrepancies among prices in various markets, whether they are spot, swap, forward or future, are readily eliminated through the application of some of the massive quantities of capital that are regularly directed toward these markets. The chance that activity in the Rolling Spot Futures and Options could be of a size to move exchange rates to an unwarranted level, or introduce unnecessary fluctuations, is as low as the chance an individual swap dealer manipulating short term interest rates through the size of his or her swap book. There is no public purpose served in mandating speculative position limits, or position accountability requirements.

F. Restrictions on Options

Part 33 of the Regulations governs the trading of options that are listed at designated boards of trade. The genesis of this chapter can be found in the options pilot program that began for non-agricultural options on October 1, 1982. This experiment was an attempt to demonstrate that commodity options trading, which had been characterized as marked with abuses several times in the history of the country, could be carried out in a beneficial and non-disruptive fashion. Given the background of the pilot program it is not surprising that the original pilot program contained many highly restrictive features. While several of the more draconian features have been softened over the years of positive experience, the chapter remains an exercise of restrictive rules and regulations.

The Exchange believes that with the exception of paragraphs 33.9 and 33.10, which deal with unlawful activities and fraud, none of Part 33 should apply to options on Rolling Spot contracts. Lengthy risk disclosure statements are completely unnecessary for the authorized users of these products. Features in the designation paragraph 33.4, like the restriction that options expire at least a day prior to the last day of trading, are also of no value to customers who readily understand the working of the market and can plan for events like an option assignment that results in a physical delivery.

The other feature of Part 33 that runs contrary to available practice in the OTC market is the treatment of option premiums. Paragraph 33.4(a)(2) requires the full payment of premiums from the buyer, at every step of the transaction. In the OTC market, premiums are frequently paid in full by the buyer at the time of the transaction, but there is no requirement to do so. The credit worthiness of the transactor is evaluated by each party and appropriate terms are arrived at. This should be the case for options on Rolling Spot Futures as well.

The ultimate treatment of option premiums at the CME Clearing House has not been determined. It is likely that due to operational constraints the full premium will be collected from the clearing member holding the buyer's position, which will then be passed on to the sellers' clearing member. The FCM community has informed the Exchange on several occasions that it would be a significant burden to have some contracts where the full option premium is collected and others where it is not. Even if the Exchange chooses to maintain a consistent treatment for all options at the Clearing House, that does not mean that all parts of paragraph 33.4(a)(2) need apply. Firms should have the same flexibility with their customers that they now have in the OTC markets, and the Exchange should have the opportunity, if necessary, to make changes in a timely fashion if competitive forces so dictate.

G. Exchange Trading Standards

Part 155 of the Regulations governs trading standards for members on the floor of an exchange as well as FCM's and IB's. These rules have formed the backbone of protection for public customers who may have neither the experience nor the resources to guarantee that their orders are handled fairly. These rules proscribe front running, disclosure of orders, prearrangement and many other practices. Since the public at large will not be participating in Rolling Spot Futures and Options, and since several of the prohibited activities are desirable and actively followed practices in the OTC markets, exemption from this part of the Regulations is required. An example will demonstrate this need.

Taking the other side of a customer's order is an everyday event in the OTC market. In fact, customers come to expect that treatment if there is not sufficient liquidity available from other sectors of the market. The difference between OTC practice and CFTC regulated exchange practice is that the public at large may not have the resources to evaluate whether they are being disadvantaged by such a trade. This asymmetry of resources and skills between customer and agent prompted the inclusion of a ban on this activity in Part 155. But in the OTC market, the sophisticated customer has many opportunities to evaluate the quality of the execution, and the broker faces the ultimate discipline of a loss of business if the customer is not happy. Customers in the Rolling Spot Futures and Options will be well equipped to monitor their own positions, and there is no reason for a prohibition like 155.3(b)(2).

Other trading practices, like prearrangement, are also standard in the OTC market, and may prove to be beneficial in the trading of Rolling Spot Futures and Options. What is key in this discussion is the ability of all of the participants to observe and evaluate the transactions. If the customer actively solicits an agent in an OTC transaction because of his or her ability to take the other side of the order, or solicit counterparties in a way that would be considered prearrangement in futures, that skill should be valued in the execution of Rolling Spot Futures and Options transactions as well. The customers are sophisticated and they have the ability to see that the potential abuses that can arise from such practices will not occur to them. CFTC regulations are not required in these matters for these customers.

This is not to say, however, that the CME will throw away its rule book in regards to Rolling Spot Futures and Options transactions on its floor. The CME has long had rules on its books, including many not mandated by the Act or the Regulations, that

are designed to ensure a fair and orderly market. For example, the CME does not absolve brokers of their responsibilities for fills just because a "fast market" situation is declared. On some other exchanges a "fast market" is the equivalent of a universal "not held" rule. However, we believe that the customers of the CME find this rule to help in providing broker diligence even in difficult market conditions. This is a pure business decision on the part of the Exchange.

The Exchange also remains today as the only futures exchange in the nation that restricts the activity of dual trading. In the Futures Trading Practices Act of 1992, Congress acted to restrict this same practice unless certain standards of audit accuracy could be met, but the Exchange had acted first, again making a business decision that trades should be conducted in this fashion for the overall benefit of the Exchange and its customers. Despite these decisions, the exemption petition requests freedom from these provisions of the law as well.

As the CME rules currently stand, Rolling Spot Futures and Options could face restrictions on dual trading once they reached the level of liquidity that the members have chosen as being sufficient to be sustainable even under a ban. But dual trading in the OTC markets is a way of life, and it could be that at some time in the future, the Exchange would seek to make a business decision to allow dual trading in these exempt products. An exempt product must be able to meet business challenges from competing sectors as they evolve, and an exemption from the dual trading requirement is as important in this case as it was in the blanket exemption for swaps and hybrids.

Anarchy will not be the new standard for exempt Rolling Spot Futures and Options contracts. While the floor trading practices of exempt Rolling Spot contracts have not been defined, it is certainly true that floor broker front running and disclosure of orders, which can damage even the sophisticated customers who trade these products, will still be a major violation of Exchange rules. These will be violations not because they are in the Act or the Regulations, but because the Exchange recognizes that such behavior is simply bad for business. Such rules define a level of professional conduct that emphasizes how seriously any such transgressions will be treated, not because the customers can't look after themselves, but because of the serious damage that could be done to the institution.

The same approach is taken in the OTC markets. Firms have internal standards of conduct that can be quite severe. These rules have been developed over the years to make sure that even the least experienced trader is aware of the gravity of breaching his or her responsibilities to the customer and the firm. Are there additional rules that need to be mandated from the government? No. The anti-fraud provisions in the law are more than adequate in this regard. Common sense business rules and basic law are all that are required for either the OTC markets or the Rolling Spot Futures and Options contracts.

III. Rules of the Exempt Rolling Spot Futures and Options

The Exchange intends to have defined contract specifications for exempt Rolling Spot Futures and Options, just as it has for all of its regulated contracts. The form of these rules will be quite similar to those already applied for in the Exchange's requests for contract market designation for these products as regulated futures and options. One difference will be in the removal of the standard language referring to necessity of submission for approval to the CFTC of all terms concerning contract expirations, trading hours and the like. The flexibility afforded by exemption, enjoyed by swaps, hybrids and OTC currency products, will be an important element in making and keeping Rolling Spot Futures and Options efficient and competitive market instruments.

The major difference will be the inclusion of a rule defining the eligible rolling spot participant. The twelve categories of eligible traders listed in Section II above will be explicitly identified in the rules governing both futures and options. In this way all FCM's that handle customer orders will be clearly notified of the eligible participant list. Just as in the exempt swaps and hybrid markets today, if an FCM allowed someone who was not an eligible participant to trade these contracts, their enforceability would be questionable since they would be illegal futures contracts under the terms of the exemption. Unlike violations in exempt swaps and hybrids, however, the FCM allowing an ineligible trader to participate in these markets would be subject to Exchange disciplinary action as well. The Exchange believes that the combination of possible economic damage to the firm and disciplinary action from the Exchange will be an effective deterrent to abuses of the eligible participant rule.

The rules that may govern the Rolling Spot Currency Futures and Options are included in the Appendix of this petition. These are supplied for informational purposes. The Board of Governors has not approved a final set of rules for the trading of exempt Rolling Spot Currency Futures and Options at this time. This should not be a concern to the Commission in that the Exchange is planning to go well beyond the steps taken in the swaps, hybrids or OTC currency markets in that we intend to have published rules of both the contract and the trading practices involving the contracts. These rules will be available to all participants, and will be enforced by the Exchange just like any other rule in the CME rulebook. Never before have participants in these markets been afforded the certainty and protection of such a code of contract terms and procedures. If the contract rules are changed in any way, ample public notification will be made, and at no time will changes be allowed which would impact the economic value of existing open interest.

The Exchange intends to begin trading Rolling Spot Currency Futures and Options as regulated products shortly after approval is received by the CFTC. It is our current intention to then convert over to exempt status once approval of this petition is received by declaring that newly listed maturities would be subject to the "exempt" rules. For example, if approval of this petition was received when the June Rolling Spot Futures and Options were listed for trading, that contract would continue to trade through expiration as a regulated product. This is necessary since some customers who may not meet the qualifications of being on the eligible list may have open positions. Once the September contract is listed for trading, it will be subject to the "exempt" rules. Because of the "spot" orientation of the contract, there will usually be only one contract month available for trading, except for a brief period of transition right before expiration.

The transition from regulated to exempt states should not pose any material problems for the users or the Exchange. The commercial orientation of the product will mean that few, if any, customers of the Rolling Spot contracts in the regulated state will be unable to participate once the contracts are exempt. What inconvenience does occur to those public customers who do not qualify to trade in the exempt state will be eased by the availability of the Exchange's traditional currency futures and options. Public customers can still use those traditional currency contracts.

IV. Public Interest and Conclusion

The Chicago Mercantile Exchange is requesting exemption from the bulk of the provisions of the Commodity Exchange Act and its Regulations. The CFTC has recently granted such an exemption to swaps and hybrids, and is considering extending similar treatment to energy contracts traded by commercial participants in the oil and gas industries. In the Futures Trading Practices Act of 1992, Congress explicitly included instruments traded on boards of trade as being eligible for consideration for exemption from the Act, if the Commission determines the exemption would be *consistent* with the public interest.

The public interest in this matter is served by the availability of these innovative, cost effective futures and options contracts in a form that is fair, well-defined, and cost effective from both economic and regulatory standpoints. Congress wanted to promote competition and innovation through its grant of exemptive authority to the CFTC, and this petition is one of the earliest expressions of what can be gained. Commercial traders and other eligible participants will have another important tool at their disposal in the currency markets, and this is most certainly consistent with the public interest.

The Exchange has demonstrated that it intends to offer a product that has many of the same features as products now traded in the OTC currency markets, but with some significant advantages. Unlike the OTC market, the Exchange intends to provide more information on trades on the floor, which should enhance the availability of prices in the market. While the currency markets are among the most transparent of all OTC markets, the addition of Rolling Spot data from the CME will add some transactions information, which can only be a plus.

Further, the Exchange intends to maintain a set of contract and trading rules, which no OTC market in the world maintains. While in

total less restrictive than the bundle of CFTC regulations from which exemption is being sought, these public rules will provide certainty and protection in key areas. The Exchange believes that an appropriate set of rules can be devised that provide benefits in excess of the costs they impose, and on net will be a sound business decision. The eligible participants benefit from having a clear set of guidelines that they can see and evaluate, and they have yet another choice of trading vehicles to express their currency opinions.

The final benefit comes from the availability, for the first time, of access to the CME Clearing House for spot currency contracts. Credit lines will be eased, and counterparty risk will be reduced. Both factors should enhance the liquidity of the OTC market in currencies. This added liquidity, focused on the floor of the CME should also benefit the traditional customers of CME currency futures in that arbitrage between Rolling Spot Futures and Options Contracts and the traditional instruments should be facilitated.

This petition has demonstrated how these innovative products will work in the current scheme of currency trading. The Exchange has also shown how restrictive trading to an eligible list of participants eliminates the need for the layers of regulation designed to protect less sophisticated customers. Further, there are no reasons to deny the exemption petition for price transparency or systemic risk issues. In summary, this petition is consistent with the public interest, it promotes innovation and competition, and it should be approved promptly.

Sincerely,

Todd E. Petzel,

Senior Vice President, Research and Chief Economist.

Appendix—Draft Contract Rules for Exempt Rolling Spot Futures and Options

Chapter _____—Rolling Spot™ Currency Contract Specifications

_____00. Scope of Chapter.—This chapter is limited in application to the contract specification of each Rolling Spot™ Currency which is open for trading and delivery on this Exchange. The procedures for trading, clearing, delivery, settlement and any other matters not specifically contained herein shall be governed by the rules of the Exchange.

_____01. Trading Months and Hours.—Futures contracts shall be scheduled for trading and delivery during such hours and in such months as may be determined by the Board of Governors.

_____02. Contract Modifications.—Specifications shall be fixed as of the first day of trading of a contract, except that all deliveries must conform to government regulations in force at the time of delivery. If any national or international government agency or body issues an order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take precedence and become part of these rules and all open and new contracts shall be subject to such government orders.

_____03. Delivery.—

A. Procedures

In addition to the procedures and requirements contained in this chapter, delivery procedures shall be governed by the rules set forth in Chapter 7.

B. Restriction

The Rolling Spot™ Currencies traded pursuant to Chapter _____shall be delivered in the country of issuance at a bank designated by the buyer.

C. Delivery Days

Delivery shall be made on the third Wednesday of the contract month. If that day is not a business day in the country of delivery or is a bank holiday in either Chicago or New York City, then delivery shall be made on the next day which is a business day in the country of delivery and is not a bank holiday in Chicago or New York City.

_____03. Eligible Participants in Rolling Spot Futures.

Participation in the Rolling Spot Futures contracts are restricted to the following firms and individuals:

(1) A bank or trust company (acting on its own behalf or on behalf of another eligible rolling spot participant);

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. § 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible rolling spot participant;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible rolling spot participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible rolling spot participant (a) which has total assets exceeding $10,000,000 or (b) the obligations of which under currency transactions (including but not limited to spot, forward, option and/or swap transactions) are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (6)(a) or by an entity referred to in paragraphs (1), (2), (3), (4), (5), (7) or (8); or (c) which has a net worth of $1,000,000 and enters into the rolling spot futures or options contract with the conduct of its business; or which has a net worth of $1,000,000 and enters into the rolling spot futures and options contract to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C.§ 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. § 78 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible rolling spot participant: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of (6) or (11) of this section;

(10) A futures commission merchant subject to regulation under the Act of a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible rolling spot participant: *Provided, however,* that if such futures commission merchant is a natural person or proprietorship, the futures commission merchant must also meet the requirements of subsection (6) or (11) of this section;

(11) Any natural person with total assets exceeding at least $10,000,000; or

(12) A member at the CME, trading for his or her own behalf or on behalf of another eligible Rolling Spot participant.

_____10. Rolling Spot™ Pound Sterling (Rolling Cable).—

A. Trading Units

The unit of trading shall be 250,000 Pounds Sterling.

B. Price Increments

Minimim price fluctuations shall be in multiples of $.0001 per Pound Sterling, commonly referred to as one point.

C. Delivery Equivalents

For the purposes of delivery, each open position in Rolling Spot™ Pound Sterling futures after the termination of trading for that contract month shall be deemed equivalent to four open positions on the same side of the market in Pound Sterling futures in the same contract month, if such Pound Sterling futures contract month is listed for trading.

D. GLOBEX® Price Limits

There shall be no trading of the Rolling Spot™ Pound Sterling futures contract during Electronic Trading Hours (ETH) at a price more than $0.0800 above or below the settlement price of the Reference Regular Trading Hours (RTH) Session.

E. Termination of Futures Trading

Futures trading shall terminate on the second business day immediately preceding the third Wednesday of the contract month. If the foregoing date for termination is a bank holiday in Chicago or New York City, futures trading shall terminate on the next preceding business day common to Chicago and New York City banks and the Exchange.

F. Position Accountability

Each open position in Rolling Spot™ Pound Sterling futures shall be deemed equivalent to four open positions in Pounds Sterling futures on the same side of the market for the application of Rule 3010.F—Position Accountability.

G. Accumulation of Positions

For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding, and the positions of all accounts in which a person or persons have a proprietary or beneficial interest, shall be cumulated.

H. Daily Adjustments

A daily adjustment shall be made to all open positions at the close of Regular Trading Hours by the Clearing House as follows. At 11:00 a.m. each trading day, the Clearing House shall determine the IMM Pound Sterling Spot/Next Swap Points. These Swap Points shall be promptly posted. If the Swap Points indicate that forward sterling is at a premium, then each open long position shall be debited the Swap Points and each open short position shall be credited the Swap Points. If the Swap Points indicate that forward sterling is at a discount, then each open long position shall be credited the Swap Points and each open short position shall be debited the Swap Points. (For example, if the Spot/Next Swap Points were determined to be 2.01 discount swap points, or $.000201 per Pound Sterling, then each long position would be credited $50.25 and each short position would be debited $50.25.) No adjustment shall be made on the termination of trading day, however. The forward swap value dates and the manner in which bank and Exchange holidays will be treated by the Clearing House shall be published in advance.

To determine the IMM Pound Sterling Spot/Next Swap Points, the Clearing House shall select at random 8 reference dealers from a list of no less than 16 dealers in forward pounds sterling who are active participants in the market for spot/next pound sterling forward swaps at 11:00 a.m. Chicago Time. Each dealer shall be requested to provide (for informational purposes only) its current bid and offer for typically sized spot/next pound sterling forward swaps. These quotes must be confirmed in writing by telex, facsimile, or other hard-copy confirmation before they are accepted as official. Only after confirmation will they be used to determine the Spot/Next Swap Points. The midpoint of each bid-offer pair shall be determined, and the 2 lowest and 2 highest such midpoints shall be eliminated. The arithmetic mean of the remaining 4 midpoints, rounded to the nearest .01 swap points ($.25 per contract) shall be the Spot/Next Swap Points for that trading day. If for any reason there is difficulty in obtaining a quote within a reasonable time interval from one of the dealers in the sample, that dealer shall be dropped from the sample, and another shall be randomly selected to replace it.

I. Final Settlement Price

The settlement price on the termination of trading day shall equal the settlement price on that day for the Pound Sterling futures contract for which that is also the termination of trading day.

Chapter _____—Options on Rolling Spot™ Currency Futures (Proposed Only)

_____00. Scope of Chapter.—This chapter is limited in application to trading in put and call options on Rolling Spot™ Currency futures contracts. The procedures for trading, clearing, inspection, delivery and settlement and any other matters not specifically covered herein shall be governed by the rules of the Exchange.

_____01. Contract Expirations, Trading Hours, and Trading Halts.—Options contracts shall be listed for such expiration dates and scheduled for trading during such hours as may be determined by the Board of Governors.

There shall be no trading in any Rolling Spot™ Currency option contract when the primary futures contract for that Rolling Spot™ Currency is limit bid or offered.

For purposes of this rule, the primary futures contract shall be defined as the futures contract trading in the lead month configuration in the pit.

For purposes of this rule during Electronic Trading Hours (ETH), the GLOBEX® Control Center shall have the responsibility of determining whether the primary futures contract is limit bid or offered.

_____02. Underlying Futures Contract.—The underlying futures contract is the nearest futures contract for which trading terminates at least two Exchange business days after the expiration date of the option.

_____03. Listing of Exercise Prices.—At the commencement of trading in a contract, the Exchange shall list put and call options at the exercise price that is nearest the previous day's settlement price of the underlying futures contract, or, if the underlying futures contract has not yet been listed for trading, at the previous day's settlement price of the most deferred futures contract which is listed for trading. For options on Rolling Spot™ Pound Sterling Futures, the Exchange shall list put and call options at the next fifteen higher and next fifteen lower exercise prices.

When a sale, bid, offer, or settlement price in the underlying futures occurs within half an exercise price interval of the fifteenth highest or fifteenth lowest existing exercise prices for options on Rolling Spot™ Pound Sterling Futures, put and call options at the next higher or next lower regular exercise price respectively shall be listed for trading on the next trading day. New options may be listed for trading up to and including the termination of trading.

The Board may modify the provisions governing the establishment of exercise prices as it deems appropriate.

_____04. Position Limits and Accountability.—For the purposes of position accountability, each open position in Rolling Spot™ Pound Sterling futures and/or options on futures shall be deemed equivalent to four corresponding open positions in Pound Sterling futures and/or options on futures on the same side of the market.

_____05. Accumulation of Positions.—For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding, and the positions of all accounts in which a person or persons have a proprietary or beneficial interest, shall be cumulated.

_____06. Exemptions.—The foregoing position limits shall not apply to commercially appropriate risk reducing option positions defined in accordance with Regulation 1.3(z)(1) of the CFTC and meeting the requirements of Rule 543.A. and shall not apply to other option positions exempted pursuant to Rule. 543.

_____07. Termination of Trading.—Options trading shall terminate at the close of trading on each Friday. If the foregoing date for termination is an Exchange holiday, options trading shall terminate on the immediately preceding business day.

_____08. Contract Modification.—Specifications shall be fixed as of the first day of trading of a contract except that all options must conform to government regulations in force at the time exercise. If the U.S. government, an agency, or duly constituted body thereof issues an order, ruling, directive, or law inconsistent with these rules, such order, ruling, directive, or law shall be construed to become part of these rules and all open and new options contracts shall be subject to such governmental orders.

_____09. Exercise.—In addition to the applicable procedures and requirements of Chapter 7, the following shall apply to the exercise of option contracts on Rolling Spot™ Currency futures.

A. Exercise of Option by Buyer

An option may be exercised by the buyer only upon the termination of trading. To exercise an option the clearing member representing the buyer shall present an exercise notice to the Clearing House by 7:00 p.m. on the day of exercise.

An option that is in the money[1] after the termination of trading shall, in the absence of contrary instructions delivered to the Clearing House by 7 p.m. on the day of termination of trading by the clearing member representing the option buyer, be exercised automatically.

B. Assignment

Exercise notices accepted by the Clearing House shall be assigned through a process of

[1] An option is in the money if the settlement price of the underlying futures contract at the termination of trading lies above the exercise price in the case of a call, or lies below the exercise price in the case of a put.

random selection to clearing members with open short positions in the same series. A clearing member to which an exercise notice is assigned shall be notified thereof as soon as practicable after such notice is assigned by the Clearing House, but not later than 45 minutes before the opening of Regular Trading Hours in the underlying futures contract on the following business day.

The clearing member assigned an exercise notice shall be assigned a short position in the underlying futures contract if a call is exercised or a long position if a put is exercised. The clearing member representing the option buyer shall be assigned a long position in the underlying futures contract if a call is exercised and a short position if a put is exercised.

All such futures positions shall be assigned at a price equal to the exercise price of the option and shall be marked to market in accordance with Rule 814 on the trading day following acceptance by the Clearing House of the exercise notice.

_____10. Emergencies, Acts of God, Acts of Government.—If exercise, assignment, or delivery or any precondition or requirement thereof is prevented by strike, fire, accident, act of government or act of God, the seller or buyer shall immediately notify the Exchange President. If the President determines that emergency action may be necessary, he shall call a special meeting of the Board of Governors and arrange for the presentation of evidence respecting the emergency condition. If the Board determines that an emergency exists, it shall take such action as it deems necessary under the circumstances and its decision shall be binding upon all parties to the contract.

_____11. Eligible Participants in Rolling Spot Options.

Participation in the Rolling Spot Options contracts are restricted to the following firms and individuals:

(1) A bank or trust company (acting on its own behalf or on behalf of another eligible rolling spot participant);

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. § 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible rolling spot participant;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible rolling spot participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible rolling spot participant (a) which has total assets exceeding $10,000,000 or (b) the obligations of which under currency transactions (including but not limited to spot, forward, option and/or swap transactions) are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (6)(a) or by an entity referred to in paragraphs (1) (2) (3) (4) (5) (7) or (8); or (c) which has a net worth of $1,000,000 and enters into the rolling spot futures or options contract with the conduct of its business; or which has a net worth of $1,000,000 and enters into the rolling spot futures and options contract to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employees Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. § 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. § 78 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible rolling spot participant: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of (6) or (11) of this section;

(10) A futures commission merchant subject to regulation under the Act of a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible rolling spot participant: *Provided, however,* that if such futures commission merchant is a natural person or proprietorship, the futures commission merchant must also meet the requirements of subsection (6) or (11) of this section;

(11) Any natural person with total assets exceeding at least $10,000,000; or

(12) A member at the CME, trading for his or her own behalf or on behalf of another eligible Rolling Spot participant.

_____12. Rolling Spot™ Pound Sterling.—

A. Trading Unit

The trading unit shall be an option to buy, in the case of the call, or to sell, in the case of the put, one Rolling Spot™ Pound Sterling futures contract as specified in Chapter —.

B. Minimum Fluctuations

The price of an option shall be quoted in U.S. dollars per pound sterling, except as provided in Rule 584 (GLOBEX® Volatility Quotes). Each of $0.0001 per pound sterling (one point) shall represent $25.00. For example, a quote of .0070 represents an option price of $1750.00 (70 points x $25.00 per point). The minimum fluctuation shall be one point. A trade may occur at a price of $.00005 ($12.50), whether or not such trades result in the liquidation of positions for both parties to the trade.

If options are quoted in volatility terms, the minimum fluctuation shall be 0.05 percent.

C. Exercise Prices

The exercise prices shall be stated in terms of U.S. dollars per pound sterling in intervals of $.0100, e.g., $1.4100, $1.4200, $1.4300, etc.

Chicago Mercantile Exchange

June 16, 1993.

Ms. Jean A. Webb,

Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

RE: Addition to petition for exemption from the Commodity Exchange Act for Rolling Spot™ Currency Futures and Options.

Dear Ms. Webb: Staff from the Office of General Counsel of the CFTC has asked the CME to provide additional information concerning the extent of our petition to exempt Rolling Spot Futures and Options originally filed on April 7, 1993. In that petition the Exchange requested exemption from all parts of the Commodity Exchange Act ("Act") except those dealing with fraud, embezzlement and manipulation (specifically 4(b) 4(o), 6(c), 9(a) and 9(b)). The CFTC staff has asked that we denominate the specific regulations that would still apply to the Rolling Spot Futures and Options.

The Commission has already acted in three instances to exempt certain classes of financial contracts. For swaps, hybrids, and energy contracts varying degrees of exemption from the Act have been granted. The Commission did not enumerate the regulations which continue to apply to these exempt instruments.

The CME believes that the circumstances to exempt Rolling Spot are most like the exemption granted swaps, and that all of the regulations that the Commission intends to apply to that class of products should also apply to Rolling Spot Futures and Options. The Exchange, based on its own research, believes the following regulations should still apply to Rolling Spot Futures and Options even after the exemption is granted.

Regulation 1.59 Activities of self-regulatory organization employees and governing members who possess material, non-public information.

As a self-regulatory organization (SRO), the CME has an obligation to make sure that its employees conduct themselves in a manner that will not harm any of its customers either through disclosure of material, non-public information or through trading on such information. The addition of exempt Rolling Spot Futures and Options does nothing to diminish that responsibility, nor should information concerning Rolling Spot contracts be treated any differently than information concerning regulated futures and options.

While regulation 1.59 does not deal with fraud in direct connection with trading

Rolling Spot Futures and Options, it deals with a very specific behavior that can be viewed as potentially defrauding Rolling Spot customers. As such, the Exchange believes it would not be exempt from Regulation 1.59 under an exemption for Rolling Spot Futures and Options.

Regulation 4.15 Continued applicability of antifraud sections.

This section of the regulations states explicitly that exemptions granted to CTA's, CPO's and the like under part 4 of the regulations do not exempt the exempt party from section 4o of the Act. As this regulation is a specific extension of Section 4o of the Act, it would apply to exempt Rolling Spot Futures and Options.

Regulation 33.9 Unlawful activities.

This regulation specifies unlawful activities in the trading and handling of orders of domestic exchange traded options. The enumerated sections include explicit prohibitions against manipulation, bucketing and misrepresentations which can be viewed as extensions of various sections of the Act from which the Exchange is not seeking an exemption. As such, the Exchange believes that Regulation 33.9 would apply to exempt Rolling Spot futures and options.

Regulation 33.10 Fraud in connection with commodity option transactions.

The regulation specifies illegal, fraudulent activity in the trading and handling of orders of domestic exchange traded options. As such, the Exchange believes that Regulation 33.10 would apply to exempt Rolling Spot Futures and Options.

These four regulations are the only regulations under the Act that the Exchange believes would apply to exempt Rolling Spot Futures and Options in all circumstances. There are other parts of the regulations that would apply in part or as they are needed to enforce sections 4(b), 4(o), 9(a) and 9(b) of the Act.

For example, if a Part 11 investigation was begun, looking into a fraud or manipulation involving Rolling Spot Futures and Options, all of the Part 11 provisions would apply. Similarly, Regulation 1.1, Words in singular and plural form, and Regulation 1.3, Definitions, have nothing to do directly with Rolling Spot Futures and Options, but to the extent they are required to clarify the portions of the Act or the regulations from which the contracts will not be exempt, they apply by extension.

The Exchange believes the exemption to the Act from which it has petitioned is broad and, like the swaps exemption previously granted, covers the vast majority of the Act and regulations thereunder. If exchanges are going to innovate and extend the line of products available to sophisticated and commercial traders, such exemptions will be mandatory to offer products that are cost effective when compared to over the counter alternatives.

If there is any other information that you require, please do not hesitate to ask.

Sincerely,

Todd E. Petzel.

Chicago Board of Trade

June 30, 1993.

Jean A. Webb,

Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Dear Ms. Webb: Enclosed is a petition submitted by the Board of Trade of the City of Chicago pursuant to Section 4(c) of the Commodity Exchange Act. The Board of Trade is petitioning the Commission to establish a "professional trading market" exemption. The exemption would exempt from the Act and CFTC rules trading in instruments on the Board of Trade or other boards of trade that is restricted to professional traders and subject to certain other conditions.

The Board of Trade requests that the Commission grant the enclosed petition expeditiously and stands ready to assist the Commission in that endeavor.

Respectfully submitted,

Thomas R. Donovan,

President and Chief Executive Officer, Board of Trade of the City of Chicago.

Petition for a Professional Trading Markets Exemption

June 30, 1993.

In 1992, Congress granted the Commodity Futures Trading Commission exemptive authority for futures contracts. Under Section 4(c) of the Commodity Exchange Act, 7 U.S.C.A. § 6(c), the CFTC may exempt any class of futures contracts from virtually all provisions of the Commodity Exchange Act if that exemption would be "consistent with the public interest." The CFTC also has found that it has similar, albeit implied, authority under CEA § 4c(b), 7 U.S.C. § 6c(b), generally to exempt any options transactions from CFTC regulation.

The CFTC has exercised these exemptive powers on several occasions—for swaps (58 Fed. Reg. 5587 (Jan. 22, 1992)); for hybrids (58 Fed. Reg. 5580 (Jan. 22, 1993)); and for energy contracts (58 Fed. Reg. 21286 (April 20, 1993)). In each instance, the CFTC has been guided by the following overriding principles:

(1) If an instrument will be offered to or traded by individuals (public customers) of limited financial means, then the CFTC will not exempt transactions in the instrument unless another regulatory scheme covers those transactions. (The Hybrid Exemption.)

(2) If an instrument will be offered to or traded by *only* professional traders (not public customers), then the instrument should be exempt from the CEA even if that instrument is not subject to any other form of federal regulation. (The Swaps and Energy Contract Exemptions.)

These two principles are well-grounded in an agency precedent. Since 1978, the CFTC has exempted options offered only to commercial entities—"trade options"—from its options regulations except for antifraud. 17 C.F.R. § 32.4. More recently, the CFTC has interpreted the CEA's Treasury Amendment, based on the purpose and context of the statute, to *exclude entirely* from the CEA certain futures on government securities and foreign currency, unless those futures are marketed to the general public. CFTC *Amicus Curiae* Brief in *Salomon Forex, Inc.* v. *Tauber*, No. 92–1406 (4th Cir. 1992) *appeal pending*. Under that interpretation, futures contracts traded in dealer markets among professional traders need no regulation.

Consistent with these well-established agency principles, the Board of Trade of the City of Chicago hereby petitions the CFTC for a "Professional Trading Market" exemption. Under the exemption, trading in any instrument on the Board of Trade or other boards of trade would be exempt from the CEA (except for CEA § 2(a)(1)(B)) and CFTC rules, subject to certain conditions.

The conditions would make the exemption available only to trading on boards of trade that notify the CFTC of their intention to operate a Professional Trading Market. Furthermore, to qualify for the exemption, a board of trade must limit trading in exempt instruments to only those parties that satisfy the definition of "professional trader." Individuals who are public customers would be excluded from the "professional trader" definition (except for individuals with $10 million in assets) and could not participate in the exempt Professional Trading Market.

All exempt transactions also would be subject to antifraud and antimanipulation rules. The petition calls for the CFTC to adopt special fraud and manipulation rules that would be applicable to any instruments the agency has exempted or will exempt from, among other provisions, CEA § 4(a), 7 U.S.C. § 6(a). The proposed exemption also would provide that any violations of these special fraud and manipulation rules would be actionable in private damage suits brought under the CEA on the same terms as other private rights of action the statute authorizes. Finally, the proposed Professional Trading Market exemption would be available only to boards of trade that provide mutualized risk, clearing guarantees to market participants under clearing systems the CFTC has approved.

Subject to these general conditions, trading in exempt instruments may occur in any manner. An exempt Professional Trading Market therefore may utilize open outcry competitive bidding on a trading floor, an electronic trading system or a form of over-the-counter dealer market-making in exempt instruments. Exempt instruments are not defined; thus, if the terms and conditions of the exemption are met, a board of trade could offer through its Professional Trading Market any instruments that "may otherwise be subject to regulation under the Act" (58 Fed. Reg. at 5589).

The "Professional Trading Market" exemption is sound public policy "consistent with the public interest" (CEA § 4(c)(1)). Many participants in existing over-the-counter markets want to trade derivative instruments without facing the risks of existing OTC markets. To that end, an exempt professional trading market would afford those OTC market users the price transparency, legal certainty and reduced credit risk of exchange markets, without the burdens of general federal regulation. Exchanges that operate Professional Trading Markets also should be able to provide their services to market users at less cost, since neither the exchanges nor their market users

would have to bear the costs attendant to CFTC regulation. Hedgers and portfolio managers, among others, should find it easier and less expensive to engage in derivative transactions on exchanges, thereby reducing price risks and volatility in our national economy overall. Moreover, as the agency has found in other contexts, professional traders are capable of assessing for themselves the risk of transacting business in an exempt market, rather than relying upon government to dictate market choices.

The "Professional Trading Market" exemption also would fulfill the CFTC's statutory mandate to grant exemptions that "promote responsible economic or financial innovation and fair competition." CEA § 4(c)(1). No one now doubts that exchange and OTC markets both compete with and complement each other. The CFTC already has granted professional trading market exemptions for instruments in which OTC dealers now make active markets. By this petition, the Board of Trade urges the CFTC to grant exchanges the same type of exemptive relief in accordance with their "fair competition" Congress envisioned when it granted the CFTC exemptive authority in 1992.

I. The 1992 Act Contemplates Exchange-Trading Exemptions

Section 4(c) of the CEA explicitly permits exchange exemptions. The CFTC is authorized to grant exemptions.

on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act.

CEA § 4(c)(1). Thus, Congress understood that even boards of trade that are otherwise designated contract markets could obtain CEA exemptions.

Other provisions in CEA § 4(c) further confirm that exchanges may obtain broad-based exemptions even from the contract market designation requirements in CEA § 4(a). In order to be exempt from any CEA provision, the CFTC must find that the exemption "would be consistent with the public interest." CEA § 4(c)(1). But Congress imposed special restrictions on any exemption—like the exemption sought by this petition—from CEA § 4(a).

One of those restrictions is that only "appropriate persons" may trade instruments exempt from contract market designation. CEA § 4(c)(2)(B)(i). As defined in the statute, the term "appropriate person" includes any "floor broker, or floor trader subject to regulation under this Act * * *." CEA § 4(c)(3)(J). By definition, floor brokers and floor traders engage in activity on exchange trading floors. The inclusion of floor trading professionals among the list of "appropriate persons" signals Congress' recognition that exchange trading, including floor trading in futures contracts, could be exempt from the contract market designation requirement (among other provisions) if the other statutory conditions were met. See CEA § 4(c)(2).

The Conference Report underscores Congress' intention that the CFTC would include exchange trading in any exemptions from the CEA's requirements the agency granted.

The Conferees intend that the Commission, in considering fair competition, will implement this provision in a fair and even-handed manner to products and systems sponsored by exchanges and non-exchanges alike.

H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992). In applying its exemptive authority, the CFTC was admonished to apply "consistent standards" to exchanges and other markets and to distinguish those markets from each other for purposes of an exemption only if such distinctions are "consistent with the public interest" and "not arbitrary and capricious." *Id.*

Congress also intended that the CFTC would exempt new markets and market innovations, in addition to existing markets. Exemptive authority would give the Commission a means of providing certainty and stability to existing *and emerging markets* so that financial innovation and market development can proceed in an effective and competitive manner.

H.R. Rep. No. 978 at 81 (emphasis added). An exemption for an exchange-sponsored Professional Trading Market would satisfy that congressionally-endorsed objective.

II. Description of the Proposed Exemption

The proposed Professional Trading Market exemption is premised upon a straightforward principle—the regulatory burdens and costs imposed generally under the Commodity Exchange Act are unnecessary and inappropriate for trading activity *exclusively* among professional traders. Exchanges and other boards of trade should be able to sponsor "professionals only" markets that would be exempt from the vast majority of CEA requirements. The proposed exemption would offer boards of trade an opportunity to develop those kinds of markets.

The proposed exemption would be appropriately conditioned to make certain that unsophisticated and poorly-capitalized members of the public could not directly participate in exempted markets. (The proposed rules that would implement a Professional Trading Market exemption are included in Attachment A to this petition.) The exemption would be available only to boards of trade that notify the CFTC in writing of their intention to operate a Professional Trading Market.[1] The notification requirement would prevent bucket shops or boiler rooms from relying upon the Professional Trading Market exemption to claim immunity from CFTC or state prosecution. If a bucket shop (or any other board of trade) failed to file its notice with the CFTC, the bucket shop would be automatically disqualified from exempt status. The notification requirement would also allow the CFTC and state law enforcement officials to know at all times the actual number of Professional Trading Markets that are relying upon the exemption. That information would enable the CFTC to monitor compliance with the conditions to the exemption.

In addition to notice, an exempt Professional Trading Market would be required to meet the following conditions:

(1) Only professional traders may trade in the exempt market;

(2) All trades are subject to broad proscriptions on fraud and manipulation applicable to transactions otherwise exempt from the CEA;

(3) Any parties that allegedly violate those proscriptions are subject to private rights of action in accordance with the procedures in CEA § 22 as well as agency enforcement actions; and

(4) All trades on the Professional Trading Market must be submitted to a clearing system that provides for mutualized risk of loss and that the CFTC has previously found to be acceptable for futures or options trading or that the CFTC finds acceptable for a particular Professional Trading Market.[2]

A. Professional Traders

The professional traders limitation largely replicates the categories of persons the agency previously has allowed to trade instruments that are exempt from the contract market designation requirement. CFTC Rule 35.1(b)(2) and 58 Fed. Reg. at 21294. In addition to those persons, the proposal contemplates that floor brokers, floor traders, and futures commission merchants would qualify as professional traders to the extent that the brokers, traders, or FCMs would be members of the board of trade operating the Professional Trading Market or persons, like lessees, otherwise holding trading privileges on that board of trade. No one could question legitimately the trading sophistication of floor brokers, floor traders and FCMs; trading is their business. Any concerns relating to their creditworthiness would be addressed by the clearing system requirement.

Individuals would not be eligible to trade on a Professional Trading Market unless they have assets in excess of $10 million. That conservative limitation greatly exceeds the "sophisticated investor" thresholds established by the Securities and Exchange Commission under the Securities Act of 1933. (SEC Regulation D treats individuals with a net worth of $1 million as "accredited investors.")[3]

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[1] Under CEA § 1a(1), "[t]he term 'board of trade' means any exchange or association, whether incorporated or unincorporated, of persons who are engaged in the business of buying or selling any commodity or receiving the same for sale on consignment." Thus, as used in the statute and this petition, the term "board of trade" includes, but is not limited to, exchanges.

[2] Like the CFTC's swaps exemption, the proposed Professional Trading Market exemption would "not apply to any financial, recordkeeping, reporting, or other requirements imposed on any person in connection with their activities that remain subject to regulation under the Act." 58 Fed. Reg. at 5589. Since the CFTC has not indicated, in the context of swaps and other exempt instruments, how it intends to exercise that reserved authority, the proposed exemption does not specifically address those issues. In the swaps exemption and others, the CFTC found the absence of policy in this area not to be an impediment to the adoption of exemptions. That same course should be followed here.

[3] Individuals that do not meet the net worth requirement could participate indirectly in an

B. Antifraud and Antimanipulation

Fraud and manipulation are the core proscriptions of the Commodity Exchange Act. The "public interest" dictates that federal law should prohibit fraudulent or manipulative acts or practices in connection with any transactions that may be subject to the CEA.

Rather than engage in a hyper-technical legal effort to mesh certain exempt transactions with the requirements of the CEA's existing fraud and manipulation provisions, the proposal contains a special antifraud and antimanipulation provision. That approach will make certain that any party committing fraud or engaging in manipulative practices in connection with an otherwise exempt instrument traded on a Professional Trading Market would not be able to wriggle out of liability under the CEA on some legal technicality. In contrast, the other CFTC exemptions adopted under CEA § 4(c) try to fit exempt transactions within the statute's existing constructs, thereby creating possible legal impediments to pursuing fraud and manipulation.

The special fraud and manipulation provisions proposed in this petition are drafted to apply not only to Professional Trading Market transactions, but to any transaction exempt from CEA § 4(a) or CFTC Rule 33.3 (the contract market designation requirement for options). By creating a direct and unambiguous fraud and manipulation provision for transactions that are not traded on designated contract markets under an exemption from CFA § 4(a) or CFTC Rule 33.3, the CFTC would be plugging the legal loopholes in the swaps and energy contract exemptions and effectuating the core protections of the CEA.[4]

In proposing special fraud and manipulation protections for exempt transactions, the petition simply follows the CFTC's approach in adopting special fraud or manipulation rules for options, foreign futures and leverage contracts. In those instances, the agency adopted special rules for each category of instruments rather than rely upon the statute's provisions. The CFTC should adopt the same approach for exempt instruments as well.

C. Private Rights of Action

Private enforcement of CEA protections can be an important means of uncovering, remedying and deterring abusive practices at no cost to the taxpayers. By providing private remedies in accordance with the procedures in CEA § 22 for persons that suffer financial harm from fraud or manipulative practices, the CFTC would certainly be acting in a manner "consistent with the public interest." To the extent that other CFTC exemptions purport to exempt persons engaging in fraud and manipulation from these remedies, the CFTC may want to reconsider that position.

D. Clearing

Any exempt transaction executed on a board of trade's Professional Trading Market must be submitted to the board of trade's clearing system. That system must have been approved by the CFTC either previously in connection with a contract market designation or independent of the designation process. In that way, the CFTC can make certain that no board of trade could claim, for purposes of qualifying for the exemption, to have a reliable clearing system for reducing financial risk in any exempt transaction, when, in fact, the claimed clearing system was either inadequate or did not exist. Any exempt transaction would need to be cleared through a system that received CFTC approval at one time or another.

The proposed exemption treats clearing, like fraud and manipulation protections, as a core protection under the CEA. In that regard, the exemption follows CFTC policy since the agency's inception. In 1976, the agency found a clearing system to be a legal prerequisite for any futures contract that is proposed to be traded; any such contract that is not subject to a clearing system would be "contrary to the public interest" and hence illegal. 41 Fed. Reg. 40093 (1976). Clearing has even been described by the CFTC as the "essence of the integrity of a futures contract." *Id.*

The proposed exemption's clearing requirement reflects that CFTC view. A CFTC-approved, mutualized risk clearing system would sharply reduce credit risk in any exempt transaction. Thus, the existence of a CFTC-approved clearing system should be considered to be "mandated by the public interest" not just "consistent with the public interest" for any exempt transaction under CEA § 4(c)(1).

III. The Public Interest and Prior CFTC Exemptions Compel Granting This Petition

In both the swamps and energy contract exemptions, the CFTC found virtually blanket exemptions from the CEA to be "consistent with the public interest" under CEA § 4(c)(1). In both instances, the CFTC identified "financial integrity" and "customer protection" as key aspects of its public interest determination. Then the agency found those interests to be satisfied based upon the qualifications of the parties' eligible to trade the exempt instruments. In swaps, the agency found:

> The Commission has addressed concerns regarding financial integrity and customer protection through the requirement that swaps only be entered into between eligible swap participants * * *.

58 Fed. Reg. at 5592. In energy contracts, the agency echoed that finding:

> [T]he Commission has addressed concerns regarding financial integrity and customer protection through the requirement that Energy Contracts may only be entered into and/or only be transacted on behalf of "appropriate persons", as defined above.

58 Fed. Reg. at 21292.

The proposed Professional Trading Market exemption would treat these public interest considerations in a manner identical to the agency's approach to swaps and energy contracts. The CFTC would "address concerns regarding financial integrity and customer protection through the requirement" that transactions under the proposed exemption would "be entered into and/or only be transacted on behalf of" professional traders, as defined in the exemption. Since the proposed "professional trader" definition largely mirrors the definitions of "eligible swap participants" and "appropriate persons" to energy contracts, by limiting market participation to "professional traders" the proposed exemption fully satisfies the "consistent with the public interest" standard under CEA § 4(c), as applied by the CFTC in its previously granted exemptions.

The proposal is even more "consistent with the public interest" than its predecessors. The CFTC has recognized the benefits of clearing to be a cornerstone of financial integrity under the CEA; without clearing, the CFTC would find any new futures or options contract to be "contrary to the public interest" under CEA § 5(7), 7 U.S.C.A. § 7(7). 41 Fed. Reg. 40093 (1976). Yet both the swaps and energy contract exemptions forbid cleaing arrangements for the exempt instruments, a policy the Commission found to be "consistent with the public interest" under CEA § 4(c). If noncleared instruments traded among professional traders are "consistent with the public interest," then cleared instruments traded among professional traders must, at least, also satisfy that "public interest" standard. The agency's longstanding recognition of the benefits of mutualized clearing logically compels that result.

Other aspects of the public interest findings made by the CFTC also support granting this petition. Like swaps and energy contracts, the Professional Trading Market would be "used by corporations, financial institutions, governments, governmental entities, and others" and would offer instruments that "are used by these entities to hedge or manage financial risk and accomplish other financial objectives" (58 Fed. Reg. at 5592). See also 58 Fed. Reg. at 21292. Like swaps and energy contracts, a Professional Trading Market would allow "participants to negotiate and structure transactions that most effectively address their economic needs" (58 Fed. Reg. at 5592). As a result, the Professional Trading Market would "enhanc[e] the global competitive position of U.S. businesses" (58 Fed. Reg. at 21292).

The proposed exemption even would serve to reduce legal uncertainty. According to some well-respected legal commentators, public participation is one of the essential ingredients of a futures contract. Russo and Vinciguerra, *Financial Innovation and*

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exempt Professional Trading Market through an interest in a commodity pool or other collective investment vehicle or through a discretionary trading account. In those situations, an individual authorizes a professional to make trading decisions on behalf of the individual. That professional then determines whether to trade in the exempt market and is responsible to make that judgment on a sound basis. Thus, the individual's interests should be protected.

[4] For example, the swaps exemption would require the CFTC to show first that the transactions at issue were futures contracts before it could invoke the antifraud provisions in at least CEA § 4(b), and possibly CEA § 4o. Unless that showing is made, the agency may be hard pressed to rely upon the futures antifraud provisions. In the manipulation area, both the swaps and energy contract exemptions would immunize parties from CEA liability for manipulating the prices of exempt instruments.

Uncertain Regulation: Selected Issues Regarding New Product Development 69 Texas L. Rev. 1431, 1446 (1991) (futures contracts are, by definition, "directly or indirectly offered to the general public"). The CFTC itself at one time espoused that view. *In re Stovall.* [1977–80 Tr. Binder] Comm. Fut. L. Re. (CCH) ¶ 20941, at 23777 (1979). According to those authorities, by excluding public customers from a Professional Trading Market, that market could be said, as a matter of law, not to involve futures contracts even if the instruments traded replicated those traded on designated contract markets today.

The proposed exemption would remove any legal questions concerning these transactions. Even if the instruments offered on the Professional Trading Market are considered to be futures, the proposed exemption would remove those instruments from the CEA's existing regulatory scheme. Thus, consistent with the swaps and energy contract exemptions, the public interest in legal certainty also would be fostered by the proposed Professional Trading Market exemption.[5]

The proposed exemption would not have a material adverse effect on regulatory or self-regulatory responsibilities. CEA § 4(c)(2)(B)(ii). A board of trade-sponsored Professional Trading Market would reduce many regulatory concerns relating to "market surveillance, financial integrity of participants, protection of customers and trade practice enforcement." H.R. Rep. No. 978 at 79. The board of trade could easily coordinate its self-initiated self-regulatory activities for its Professional Trading Market with those of any contract market the board of trade also might sponsor as well as other contract markets and the Commission. To the extent the diffuse and nondisclosed swaps and energy contract markets did not pose regulatory problems for the CFTC under CEA § 4(c)(2)(B)(ii), a board of trade-sponsored Professional Trading Market that notifies the agency of its existence should readily satisfy the statutory standard.

Finally, the proposed exemption is perfectly compatible with, if not required by, the CFTC's mandate to promote fair competition in granting exemptions. CEA §§ 4(c) (1) and 15. Any board of trade—whether an exchange or not—that met the standards of the rule could qualify for the exemption and would "remain free to compete under the [exemption] on an equal footing with" other boards of trade (58 Fed. Reg. 5593 n. 48). Therefore, consistent with the CFTC's findings in the swaps and energy contract exemptions, the proposed Professional Trading Market exemption does not "raise any significant competitive issues" (58 Fed. Reg. at 5593). See also 58 Fed. Reg. at 21293.

Conclusion

The Conference Committee Report on the 1992 Act directed the CFTC to "implement" its exemptive powers "in a fair and even-handed manner to products and systems sponsored by exchanges and non-exchanges alike." H.R. Rep. No. 978 at 78. The Professional Trading Market exemption allows exchanges and other boards of trade to qualify for the same exemptive treatment the CFTC has afforded to swaps and energy contracts. The proposed exemption thus embodies the fair and even handed treatment Congress intended.

Moreover, the regulatory safeguards in the Professional Trading Market proposal are considerably stronger than those the CFTC approved in the swaps and energy contract exemptions. While all three exemptions would exclude public participation in exempt instruments, only the attached exemption would 1) require that the CFTC receive notice that a particular market will rely on the exemption; 2) afford unambiguous protections to all market participants from fraud and manipulation in connection with exempt instruments; 3) permit aggrieved parties to exercise CEA legal remedies to obtain compensation for damages suffered as a result of exempt transactions and 4) mandate that all exempt transactions rely upon the financial integrity of a CFTC-approved clearing system to remove the parties' credit risk from exempt transactions. In short, the proposed exemption is better from every regulatory perspective than the exemptions the CFTC previously has approved.

To be fair and to act in a manner "consistent with the public interest," the Commission should approve the accompanying rules for a Professional Trading Market exemption. Since the proposed exemption merely incorporates and enhances exemptive determinations the agency has already made, that approval should be granted even more expeditiously than the previously-adopted swaps and energy contract exemptions. The Board of Trade will be happy to work with the Commission and its staff toward that end.

Patrick H. Arbor,

Chairman of the Board, Board of Trade of the City of Chicago.

Thomas R. Donovan,

President and Chief Executive Officer, Board of Trade of the City of Chicago.

Attachment A

PART 36—EXEMPTION OF PROFESSIONAL TRADING MARKET TRANSACTIONS.

Authority: 7 U.S.C. 2, 6, 6c, 12a, 25.

§ 36.1 Definitions.

(a) *Scope.* The provisions of this part shall apply to any professional trading market transaction which may be subject to the Act.

(b) *Definitions.* As used in this part:

(1) "Professional trading market" means: a market operated by a board of trade, as that term is defined in Section 1a(1) of the Act, where the board of trade:

(i) permits only professional traders, as that term is defined in § 36.1(b)(2), to enter into transactions executed on or through such market;

(ii) prior to commencement of activities on such market, notifies the Commission, in writing, of the board of trade's intention to operate such market; and

(iii) requires all transactions executed on or through such market to be submitted to, or guaranteed by, a mutualized risk clearing system that the Commission has approved either (A) in the context of a contract market designation already granted under Sections 5 and 6 of the Act or § 33.4 of this chapter, or (B) in a separate approval proceeding if the clearing system has not been approved in the context of contract market designation.

(2) "Professional trader" means:

(i) A bank or trust company (acting on its own behalf or on behalf of another professional trader);

(ii) A savings association or credit union;

(iii) An insurance company;

(iv) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. § 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such investment company or foreign person is not formed solely for the specific purpose of constituting a professional trader;

(v) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such commodity pool or foreign person is not formed solely for the specific purpose of constituting a professional trader and has total assets exceeding $5,000,000;

(vi) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting a professional trader (A) which has total assets exceeding $10,000,000 or (B) the obligations of which under any professional trading market transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (b)(2)(vi)(A) of this section or by an entity referred to in paragraphs (b)(2)(i), (ii), (iii), (iv), (v), (vii) or (viii) of this section; or (C) which has a net worth of $1,000,000 and enters into a professional trading market transaction in connection with the conduct of its business; or (D) which has a net worth of $1,000,000 and enters into a professional trading market transaction to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business.

(vii) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. § 80b–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(viii) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity

[5] The CFTC has acknowledged that "legal certainty" may be a goal of a final exemptive rule, but "it is not a statutory mandated finding which the Commission must make." 59 Fed. Reg. at 5592 n.36. Thus, even if the proposed exemption would not promote legal certainty, the proposed exemption still would be "consistent with the public interest" under CEA § 4(c)(1).

or any instrumentality, agency, or department of any of the foregoing;

(ix) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et. seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another professional trader: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of (b)(2)(vi) or (xi) of this section;

(x) A futures commission merchant subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another professional trader: *Provided, however,* that if such futures commission merchant is a natural person or proprietorship, the futures commission merchant must also meet the requirements of paragraph (b)(2)(vi) or (xi) of this section;

(xi) Any natural person with total assets exceeding at least $10,000,000; or

(xii) A floor broker, floor trader, or futures commission merchant subject to regulation under the Act that is a member of the board of trade operating the professional trading market, acting on its own behalf or on behalf of another professional trader.

§ 36.2 Exemption.

Any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to any transaction executed on a professional trading market as defined in § 36.1(b)(1) and any board of trade sponsoring a professional trading market, is exempt from all provisions of the Act (except section 2(a)(1)(B) of the Act) and all otherwise applicable regulations thereunder except Part 37 of this chapter adopted under sections 4(c) and 4c of the Act.

PART 37—REGULATION OF EXEMPTIONS GRANTED UNDER SECTIONS 4(c) AND 4c OF THE ACT

§ 37.1 Fraud and manipulation in connection with exempt transactions.

(a) *Fraud.* It shall be unlawful for any person, directly or indirectly, in or in connection with any agreement, contract or transaction that is subject to an exemption from Section 4(a) of the Act granted by the Commission under Section 4(c) of the Act or an exemption from § 33.3 of this chapter granted by the Commission under Section 4c of the Act—

(1) To cheat or defraud or attempt to cheat or defraud any other person;

(2) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(3) To deceive or attempt to deceive any other person by any means whatsoever.

(b) *Manipulation.* It shall be unlawful for any person to manipulate or attempt to manipulate the price (i) of any agreement, contract or transaction that is subject to an exemption from Section 4(a) of the Act granted by the Commission under Section 4(c) of the Act or an exemption from § 33.3 of this chapter granted by the Commission under Section 4c of the Act or (ii) of any commodity in interstate commerce or any contract of sale of a commodity for future delivery on or subject to the rules of any contract market.

(c) *Exemption disqualification.* Any person violating this regulation shall be disqualified from relying upon any exemption granted by the Commission under Sections 4(c) or 4c of the Act.

(d) *Private right of action.* In accordance with the procedures set forth in Section 22 of the Act, any person injured by a violation of subsections (a) or (b) of this regulation may bring a right of action for actual damages suffered as a result of that violation against any person who committed or aided and abetted that violation.

[FR Doc. 93–19531 Filed 8–13–93; 12:13 pm]

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Federal Register

Monday
August 16, 1993

Part III

Department of Justice

Immigration and Naturalization Service

Department of State

Bureau of Consular Affairs

8 CFR Part 212
22 CFR Part 41

Unavailability of Transit Without a Visa to Citizens of the Former Yugoslavia; Interim Rules

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1397R–93]

Unavailability of Transit Without a Visa to Citizens of the Former Socialist Federal Republic of Yugoslavia

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with requests for comments.

SUMMARY: This interim rule amends 8 CFR 212.1(f)(3) to clarify that the addition of the Republics of the former Socialist Federal Republic of Yugoslavia to the list of countries whose nationals are prohibited from transiting through the United States without a visa is effective August 16, 1993.

DATES: This rule is effective August 16, 1993. Interested persons are invited to submit written comments on or before September 15, 1993.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. Please include INS number 1397R–93 on your correspondence to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Una Brien, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, Telephone (202) 514–2681.

SUPPLEMENTARY INFORMATION: Section 212(d)(4)(C) of the Immigration and Nationality Act (the Act) provides authority to the Attorney General acting jointly with the Secretary of State to waive nonimmigrant visa requirements for aliens who are in continuous and direct transit through the United States and are using a carrier who has entered into a TWOV agreement with the Immigration and Naturalization Service (the Service) as provided in section 238(c) of the Act.

This interim rule amends 8 CFR 212.1(f)(3) to clarify that the addition of the Republics of the former Socialist Federal Republic of Yugoslavia to the list of countries whose nationals are prohibited from transiting through the United States without a visa is effective August 16, 1993.

The addition of the Republics of the former Socialist Federal Republic of Yugoslavia was made by interim rule published at 58 FR 4891 on January 19, 1993. However, pursuant to section 212(d)(4)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(d)(4)(C), an addition to this list of countries can be effective only upon joint action of the Attorney General and the Secretary of State. The Department of State is publishing simultaneously with this revision an interim rule amending 22 CFR 41.2(i) to add the Republics of the former Socialist Federal Republic of Yugoslavia to the list of countries whose nationals are prohibited from transiting through the United States without a visa. Accordingly, it is necessary to amend 8 CFR 212.1(f)(3) to clarify that the addition therein of the former Yugoslav republics is effective upon the date of joint action taken by the Immigration and Naturalization Service and the Department of State. Comments received on the January 19, 1993 regulation will be addressed when the rule is finalized.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b) (A)–(B) and 553(d) (2)–(3). The reasons and the necessity for the immediate implementation of this interim rule are as follows: This rule is necessary to prevent an anticipated sharp increase in the abuse of the TWOV procedure by nationals of the former Socialist Federal Republic of Yugoslavia in the near future. Further, there is a reasonable concern that publication of this rule with an effective date 30 or 60 days after publication could lead to the counter productive result of a surge of individuals attempting to make fraudulent use of the TWOV procedure during the interval between the publication of the rule and its effective date. To preempt such a reaction, the rule is made effective upon the date of its publication.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visa, Ports of entry, Travel restrictions.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

2. Section 212.1 is amended by revising the first sentence in paragraph (f)(3) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(f) * * *

(3) *Unavailability to transit.* This waiver of passport and visa requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Libya, Pakistan, Sri Lanka, or a national of a Republic of the former Socialist Federal Republic of Yugoslavia (effective August 16, 1993) which includes Bosnia, Croatia, Serbia, Montenegro, Slovenia, and Macedonia. * * *

* * * * *

Dated: August 5, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–19582 Filed 8–13–93; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 1847]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Unavailability of Transit Without a Visa to Citizens of the Former Socialist Federal Republic of Yugoslavia

AGENCY: Bureau of Consular Affairs, State.

ACTION: Interim rule, with request for comments.

SUMMARY: This interim rule amends 22 CFR 41.2(i) by adding the Republics of the former Socialist Federal Republic of Yugoslavia to the list of countries whose nationals are prohibited from transiting through the United States without a visa. Civil disorders and resulting deterioration of economic conditions in the former Socialist Federal Republic of

Yugoslavia have been accompanied by a substantial increase in the fraudulent use of the Transit Without Visa (TWOV) procedure. This rule is necessary to eliminate the abuse of the TWOV privilege by nationals of those Republics which were formerly a part of the Socialist Federal Republic of Yugoslavia which include Bosnia, Croatia, Serbia, Montenegro, Slovenia, and Macedonia.

DATES: This rule is effective August 16, 1993. Interested persons are invited to submit written comment on or before September 15, 1993.

ADDRESSES: Written comments, with a reference to this rule to insure proper and timely handling, may be submitted to the Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, DC 20522–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel (202) 663–1204, or A. Roy Mackay (202) 663–1205, Legislation and Regulations Division.

SUPPLEMENTARY INFORMATION: Section 212(d)(4)(C) of the Immigration and Nationality Act (the Act) provides authority to the Attorney General and the Secretary of State, acting jointly, to waive nonimmigrant visa requirements for aliens who are in continuous and direct transit through the United States and are using a carrier which has entered into a TWOV agreement with the Immigration and Naturalization Service (the Service) as provided in section 238(c) of the Act.

The Department of State has learned that the Service is facing an increasing problem with aliens using the TWOV privileges to gain entry into the United States by claiming political asylum. Specifically there has been an increase in the abuse of the TWOV program by nationals of the Republics that formerly comprised the Socialist Federal Republic of Yugoslavia. As a result, air carriers transporting these aliens have become victims of this abuse since they are liable for fines and detention costs associated with TWOV participants who do not depart the United States in a timely manner. Therefore, all of the Republics that formerly comprised the Socialist Federal Republic of Yugoslavia are being added to the list of countries whose nationals will not be able to transit the United States without a visa.

The implementation of this rule as an interim rule, with a 30-day provision for post-promulgation public comments, is based upon the "good cause" exceptions established by 5 U.S.C. 553(b)(A)–(B) and 553(d)(3). The immediate effectiveness of this rule is necessary to prevent an anticipated sharp increase in the abuse of the TWOV procedure by nationals of the former Socialist Federal Republic of Yugoslavia in the near future. Further, there is a reasonable concern that publication of this rule with an effective date 30 or 60 days after publication could lead to the counter-productive result of a surge of individuals attempting to make fraudulent use of the TWOV procedure during the interval between the publication of the rule and its effective date.To preempt such a reaction, the rule is made effective upon the date of its publication.

In accordance with 5 U.S.C. 605(b), it is certified that this rule does not have a "significant adverse economic impact" on a substantial number of small entities. No Regulatory Impact Analysis is required because this rule is not a major rule within the meaning of section 1(b) of E.O. 12291. Nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Waiver of visa.

Accordingly, 22 CFR part 41 is amended as follows:

PART 41—AMENDED

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

Authority: 8 U.S.C. 1104, 1153 Note, 1187.

2. In paragraph (i) to § 41.2, the third sentence is revised to read as follows:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(1) *Aliens in immediate transit without visa (TWOV).* * * * This waiver of visa and passport requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Libya, Pakistan, Sri Lanka, or a citizen of a Republic of the former Socialist Federal Republic of Yugoslavia which includes Bosnia, Croatia, Serbia, Montenegro, Slovenia, and Macedonia.

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Dated: July 28, 1993.

John H. Adams,

Deputy Assistant Secretary for Visa Affairs.

[FR Doc. 93–19562 Filed 8–13–93, 8:45 am]

BILLING CODE 4710–06–M

federal register

Monday
August 16. 1993

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 821
Medical Devices; Device Tracking; Final Rules and Request for Comments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 821

[Docket No. 91N–0296]

Medical Devices; Device Tracking; Opportunity for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; opportunity for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comments on the final rule on device tracking, which is published elsewhere in this issue of the **Federal Register**. The revised device tracking proposed rule became final on November 29, 1992, by operation of the Medical Device Amendments of 1992 (the 1992 Amendments). Although not required to do so, FDA realizes that there may be issues not previously considered, such as technical issues on specific provisions, and therefore is providing this additional time for comment. If changes are warranted by comments, FDA will make further changes in the rules.

DATES: Written comments by September 15, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFA–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION: The SMDA included provisions requiring FDA rulemaking to require that manufacturers track certain devices from their establishments through the distribution chain to the patients using the devices. Among these provisions were statutory deadlines that were later revised by the 1992 Amendments. The device tracking and statutory deadline provisions are discussed in detail in the preamble to the final rule on device tracking published elsewhere in this issue of the **Federal Register**.

FDA has already provided opportunities for public comment on the proposal that preceded the rule published today as required by the Administrative Procedure Act. Although FDA is allowing additional comments on this rule, this action is in no way required by the Administrative Procedure Act. FDA is not interested in receiving comments that it has already received and considered. Although the agency does not believe that any public purpose would be served by reopening for further comment at this time the issues already addressed in the final rule being published, FDA recognizes that in any rulemaking there will be technical issues involving specific provisions. Therefore, the agency is providing 30 days for comment on this final rule on such issues. Comments should be identified with the docket number found in brackets in the heading of this document. FDA will publish additional changes in the final rule if comments bring to FDA's attention an issue, not already considered, that warrants revision.

III. Opportunity for Comments

Under 21 CFR 10.40(e), an opportunity for comment on this final rule is being provided. Interested persons may, on or before September 15, 1993, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the relevant docket number found in the heading of the document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This document is issued under the authority of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, and 374) and under authority delegated to the Commissioner of Food and Drugs.

Dated: July 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19473 Filed 8–11–93; 11:23 am]

BILLING CODE 4160–01–F

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21 CFR Part 821

[Docket No. 91N–0296]

Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; suspension of effective date; notification of status under the Safe Medical Devices Act; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is suspending the effective date of the final rule on device tracking that appeared in the **Federal Register** of May 29, 1992, until August 29, 1993. The agency is also announcing that the revised proposed rule is now a final rule by operation of law. Further, the agency is amending the regulations to make certain technical amendments. This action is being taken to implement requirements of the Safe Medical Devices Act of 1990 (the SMDA) and the Medical Device Amendments of 1992 (the 1992 amendments).

EFFECTIVE DATE: August 29, 1993.

ADDRESSES:

Submit information concerning the distribution of tracked devices for sale or rental to: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850.

Submit other information to Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, (address above), 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

A. Original Statutory Deadlines

The SMDA (Pub. L. 101–629), which became law on November 28, 1990, added section 519(e) (21 U.S.C. 360i(e)) to the Federal Food, Drug, and Cosmetic Act (the act). Section 519(e) of the act requires that manufacturers track certain devices from the manufacturer through the distribution chain to the patient using the device. Under section 519(e) of the act, manufacturers must track life-supporting or life-sustaining devices that are used outside a device user facility and permanently implantable devices, if the failure of these devices would be reasonably likely to have serious adverse health consequences. Section 519(e) of the act also gives FDA the authority to designate other devices to be subject to tracking.

Section 3(c) of the SMDA required FDA to issue proposed regulations implementing section 519(e) of the act within 9 months of the enactment date of the SMDA (i.e., by August 28, 1991). Section 3(c)(2) of the SMDA required FDA to issue final device tracking regulations not later than 18 months after the enactment date of the SMDA (i.e., by May 28, 1992). If the agency did not issue final regulations by May 28, 1992, section 3(c)(2) of the SMDA provided that there was good cause to consider the agency's proposed regulations as the final regulations on that date, to protect the health of

patients using devices required to be tracked.

In the Federal Register of March 27, 1992 (57 FR 10702), FDA published a proposed rule to implement tracking. The period for submitting comments in response to the March 27, 1992, proposal closed on May 26, 1992. By May 15, 1992, the agency had received over 400 comments and expected to receive more comments before the close of the comment period. These comments raised significant issues, including: (1) The rationale for the May 28, 1992, effective date of any final rule; (2) the need to clarify tracking requirements for imported and exported devices; (3) the proposed rule's prohibition against shipping tracked devices to distributors who failed to keep or provide tracking information; (4) objections to many devices identified as types of devices requiring tracking; (5) the data requirements; and (6) reporting timeframes and costs that were alleged, respectively, to be too short and too low in estimates. (See 57 FR 22971 through 22976, May 29, 1992.)

In response to these concerns, FDA revised the March 27, 1992, proposed rule, and on May 27, 1992, the agency issued, put on public display, and filed in the public administrative record in the FDA's Dockets Management Branch, a revised proposed rule that withdrew the March 27, 1992, proposed rule and set forth revised proposed regulations for tracking medical devices. On May 28, 1992, the agency issued, put on public display, and filed in the public administrative record, a notice that the proposed regulations issued the day before had become the final regulations on that date, by operation of section 3(c) of the SMDA. The agency also issued the revised tracking regulations as a final rule. In an attempt to promote public understanding of the final rule status of the May 27, 1992, revised proposed rule, FDA published both the May 27, 1992, revised proposed tracking rule and the May 28, 1992, final tracking rule in the Federal Register of May 29, 1992 (57 FR 22971, 22966).

In the May 27, 1992, revised proposed rule, FDA made the following changes from the March 27 proposal:

1. A new provision was added to allow affected parties to apply for exemptions and variances from the rule.

2. FDA announced that it would handle any request for premarket clearance needed to comply with the rule in an expedited manner, if the request was submitted by November 1, 1992.

3. FDA made clear that it was not necessary to track exported devices once they left the United States.

4. FDA removed from the regulation the provision which stated that manufacturers would be required to stop shipping to distributors who were not complying with the tracking requirements. Manufacturers would nevertheless be responsible for taking reasonable steps to ensure compliance by distributors.

5. Under the original proposal, manufacturers would have been responsible for establishing a tracking system that would have enabled them to provide names and addresses to FDA within 3 working days of a request. The revised proposal provided that manufacturers would have to provide distributor information within 3 days and patient information within 10 working days.

6. The March 27, 1992, proposal would have required manufacturers to conduct an audit of their tracking system every 6 months. In response to comments objecting that this proposed requirement was unnecessarily burdensome, FDA changed it in the May 29, 1992, proposal to require an audit every 6 months for the first 3 years for which a device is tracked and annually thereafter.

7. FDA clarified that initial importers are responsible for establishing tracking systems for imported devices.

8. In addition, FDA made a number of revisions in the illustrative list of devices subject to tracking.

B. The 1992 Amendments

On June 16, 1992, the 1992 amendments (Pub. L. 102–300) became law. The 1992 amendments modified certain provisions of the SMDA that dealt with device tracking, postmarket surveillance, and distributor and user reporting of device-associated serious injuries. The 1992 amendments modified the device tracking provisions of the SMDA to: (1) Change the previous May 28, 1992, deadline for issuing final tracking regulations; (2) clarify the date on which section 519(e) of the act becomes effective; and (3) make the regulation which became final by operation of the SMDA on May 28, 1992, a proposed regulation.

Section 2(a)(1) of the 1992 amendments amended section 3(b)(3) of the SMDA to make the tracking requirements of section 519(e) of the act effective upon the expiration of 9 months after the issuance of final implementing regulations. The previous wording of section 3(b)(3) had not set a specific effective date for the regulations.

Section 2(a)(2)(A) and (a)(2)(B) of the 1992 amendments amended section 3(c) of the SMDA to extend the time for FDA to issue a final rule until November 28, 1992, and to provide that if FDA had not yet issued a final rule by then, the revised proposed rule would become the final rule on November 29, 1992, to become effective, as noted above, on August 29, 1993. Because of the statutory mandate of the 1992 amendments, the agency is suspending the effective date of the revised proposed rule (now transformed into a final rule again by operation of the 1992 amendments) until August 29, 1993. Elsewhere in this issue of the Federal Register, FDA is also issuing amendments to the illustrative list of tracked devices (21 CFR 821.20(b)) and the list of designated devices (21 CFR 821.20(c)).

II. Comments

FDA received more than 1,700 comments on the March 27, 1992, proposed rule and the subsequent revised proposed rule. Most of these comments requested the deletion of various devices from the illustrative list of devices subject to tracking. As noted above, these comments are discussed elsewhere in this issue of the Federal Register. In addition, comments proposed the use of social security numbers as a primary method of tracking, while other comments filed by distributors took issue with requirements that distributors open their records to audit by manufacturers. FDA notes that, to the extent that the preambles to the proposed and revised proposed rules discuss requirements of, or comments on, this final rule, these preambles still provide useful guidance.

As described below, after reviewing the major comments on the revised proposed rule, FDA determined that they did not raise issues that warrant further changes beyond those already included in the final rule published on May 29, 1992. Accordingly, FDA believes it is appropriate that the final rule of May 29, 1992, which the 1992 amendments had transformed into a proposed rule, become a final rule by operation of law under the "hammer" provisions of the 1992 amendments. Despite the statutory "hammer," however, the agency has decided to respond to the most significant comments in order to communicate its views to the industry and the public. FDA also intends to issue a question and answer document to clarify certain issues regarding the tracking requirements.

A. Social Security Numbers

One comment by a trade association suggested an alternative method of tracking permanently implantable

devices. The comment suggested that, for implantable devices, manufacturers obtain at the time of implantation the name, address, and social security number of the patient and the name and address of the implanting physician. Patients who choose not to provide their social security number would be given the option of electing not to be tracked or taking change of address cards to be sent to the manufacturer when they move. At the time of a recall or patient notification, manufacturers would use Internal Revenue Service (IRS) and Social Security Administration (SSA) data bases to obtain updated addresses. The comment explained that, if this mechanism were employed, manufacturers would not need to keep patient addresses up-to-date on a regular basis. The comment stated that this approach would be more efficient and cost-effective than the one proposed by FDA and would be less intrusive upon patients as there would be no need to constantly contact them to keep their addresses up-to-date. The comment acknowledged that legislation would be required to enable manufacturers to have access to IRS data bases.

FDA is open to the potential for utilizing data bases that could add efficiency to the tracking process while meeting the goal of an effective tracking system. FDA is concerned, however, that neither the SSA nor IRS data bases were designed for this purpose. The IRS data base is limited to persons within specified income levels, while the SSA data base is limited to social security beneficiaries. Moreover, as noted in the comment, these data bases cannot be used to track medical devices without legislation. Due to these limitations, such alternatives remain unavailable as regulatory options at this time. Nevertheless, FDA encourages interested parties to further explore and study additional options to the present regulations to determine if there are alternative effective means of accomplishing the goal of section 519(e) of the act—prompt and complete notification and recalls.

B. Distributor Records

Comments from distributor and supplier associations and from parties involved in renting devices raised questions concerning the information that distributors, final distributors, and multiple distributors are required to report to manufacturers and make available to manufacturers during audits under new § 821.30.

Some comments maintained that the identity of purchasers constitutes end-user sales information and that disclosure to manufacturers of information such as a list of customers or patient users of devices would enable manufacturers to compete with distributors for sale directly to patients and physicians.

Certain comments also claimed that the exact number and identity of devices and the sources from which the devices are received are proprietary information when devices are purchased from brokers and customers of manufacturers rather than from the manufacturers themselves. According to these comments, disclosure of such information would enable manufacturers to exert pressure on these sources to eliminate the middle man. Comments also maintained that disclosing the location of devices, when one firm leases devices to another firm that further rents the devices, would provide manufacturers with the identity of customers with whom manufacturers can deal directly. Finally, comments also objected, to provisions in § 821.30(c)(3) that require distributors, final distributors, and multiple distributors to allow manufacturers to audit this distribution information.

Some comments suggested that distributors could certify compliance with tracking requirements in lieu of providing the actual information to manufacturers; provide information only to FDA, if it is considered commercial and confidential; and restrict auditing of such information, except by FDA.

FDA recognizes that there may be ways to ensure effective tracking other than that set out in this regulation. However, to the extent the comments suggested that FDA be the repository of the tracking information, this is not an appropriate agency function, nor does the agency have the resources to bear the responsibilities this activity would impose.

With respect to the other options raised by the comments, FDA notes that it will accept for review under § 821.2, petitions for exemptions and variances that accommodate distributors' concerns about reporting purportedly proprietary information to manufacturers. It may be appropriate, for example, in certain instances, for a distributor to carry out the tracking responsibilities of a device on the manufacturer's behalf. However, FDA emphasizes that these alternative proposals must ensure that effective tracking is conducted and that all necessary information is collected and maintained in accordance with the tracking regulations. Moreover, that the person submitting the petition would need to take full legal responsibility for this task. FDA has added a reference to the availability of procedures for petitions for exemption or variance in §§ 821.25 and 821.30 for clarification.

With respect to comments on patient or physician names, FDA believes that this information is necessary for effective tracking. FDA believes that there could not be effective tracking of devices unless there are records on the final purchaser of a device. Indeed, it was the lack of this very information for a defective heart valve that prompted the enactment of section 519(e). Thus this information must be part of the tracking.

On the issue of audits, FDA wishes to make clear to both manufacturers and distributors that the records that manufacturers may audit (in the event there is no exemption or variance in place from the audit requirement) are only those records that contain the information that must be reported to the manufacturer under part 821 and nothing more. Thus, under § 821.30(c)(3), a manufacturer is not entitled to ask for or to see any other information or records. FDA notes that, if the information subject to audit (which should have been reported already to the manufacturer) is kept interspersed with other information, distributors can reorganize their recordkeeping systems to avoid making more information available to manufacturers.

FDA also believes that comments from persons involved in renting devices have raised issues in the context of commercial arrangements and schemes that need to be more fully examined and taken into account by the agency in order to ensure effective tracking. These arrangements and schemes include the refurbishing, repurchase, remarketing, transfer, or exchange of new and used tracked devices, the multi-tiered rental of devices and the management of rental devices by persons not owning them. Consequently, the agency is soliciting the submission of information on: (1) How tracking requirements affect firms engaged in such practices as the refurbishing, repurchasing, remarketing, transfer or exchange of new and used tracked devices for the purpose of sale or rental and in the multi-tiered rental of devices by more than one company and the management of rental devices by firms that do not own the devices; (2) the types and numbers of tracked devices that are subject to such practices; and (3) the numbers of brokers, distributors, financial institutions, and other types of firms involved in such practices. This additional information will assist the agency in determining whether FDA should consider modifying its

requirements for tracking sometime in the future.

C. Exemptions and Variances: Premarket Clearance

Because of the change in effective dates as a result of the 1992 amendments, FDA is revising the dates in new § 821.2(d). Under the final rule, if a petition under new § 821.2 is received by August 29, 1993, FDA will approve or disapprove the petition in 60 days or extend the effective date of the regulation for the device that is the subject of the petition.

Similarly in the preamble to the revised proposed rule, FDA stated that it would provide for expedited review of 510(k)'s or PMA supplements that are required to comply with this regulation if the submission is made by November 1, 1992. This date is also changed to August 29, 1993. To ensure prompt attention, each of these submissions should be clearly marked "Tracking 510(k)" or "Tracking PMA," as appropriate.

D. Effect on Other Requirements

Finally, FDA wishes to make clear that this tracking regulation has no effect on other statutory or regulatory requirements, e.g., MDR obligations under 21 CFR part 803 or investigational device exemption (IDE) requirements under 21 CFR part 812. FDA believes it needs to emphasize this point because comments made to CDRH's Medical Device Administration and Monitoring Branch and Office of Device Evaluation indicate that some interested persons believe, incorrectly, that FDA's promulgation of certain tracking definitions (e.g., "serious adverse health consequences" and "permanent implant") have somehow narrowed the scope of the agency's MDR regulations (part 803) or IDE regulations (part 812).

FDA advises that the scope of the tracking regulation is not synonymous with that of either the MDR or the IDE regulation (or any other FDA regulation). These regulations originate in different statutory sections, serve different functions, and use different terminology, and, therefore, each regulation has its own scope as reflected in the pertinent regulatory definitions. The tracking regulation does not modify or alter any obligations imposed under other statutory or regulatory requirements, and industry may not rely on tracking definitions to evade other statutory or regulatory requirements.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

In conjunction with the agency's initial issuance of a proposed rule establishing tracking requirements for medical devices (57 FR 10702, March 27, 1992), FDA placed on file at the Dockets Management Branch a copy of the agency's "Threshold Assessment of the Impact of Requirements For Medical Device Tracking (Second Version)."

Taking into account: (1) FDA's withdrawal of the March 27, 1992, proposed rule and the agency's reproposal of a device tracking regulation containing revised requirements and revised illustrative list of devices subject to tracking (57 FR 22971, May 29, 1992), (2) comments received on the estimated costs to industry of the agency's March 27, 1992, and May 29, 1992, proposed tracking regulations, and (3) revisions to the illustrative list of devices subject to tracking and the clarifications in this preamble, FDA has examined the economic impact of the final tracking regulation and assessed the extent to which the final rule would have an effect upon small business entities in accordance with the economic requirements of Executive Order 12291 and the Regulatory Flexibility Act (Pub L. 96–354). The agency concludes that the rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

This regulation will require manufacturers of specific devices to develop, document, and operate a tracking system that will allow them to quickly notify all distributors, health professionals, or patients of a recall or the existence of a serious health risk. Each manufacturer must be able to track each device throughout the distribution system all the way to the patient. Distributors, including hospitals, licensed practitioners, and rental companies, all have to cooperate for the tracking systems to work. Lists of patients and/or distributors must be "audited" on a half-yearly basis for the first 3 years and annually thereafter. The agency considers 23 device types to be subject to tracking at this time. Because most of the included devices are critical devices, the manufacturers of these devices already have to track the devices to the first consignee (at least) under the CGMP regulations. Some manufacturers have indicated to the agency that they already have tracking systems that track the devices even further through the distribution system. For permanent implants, the registry of current patients will have to be maintained on an ongoing basis. For those life-sustaining and life-supporting devices used outside of a device user facility (e.g., an apnea monitor used at home after a high-risk infant leaves the hospital), each device will be tracked to the last purchaser or patient possessing the device. Thus, if a device is rented to several patients over its lifetime, tracking by manufacturers is required only to the level of the multiple distributor (the last purchaser possessing the device) until it becomes necessary to determine the patient currently using the device. Based on the cost analyses below, the economic impact on industry will not exceed the $100 million threshold established under Executive Order 12291. The estimated average annual cost of medical device tracking during the first 8 years following the effective date of this regulation is $40.2 million. The cost is made up of two parts: $37.8 million to track the 19 permanent implants, and $2.4 million to track the 4 devices used outside of device user facilities. In addition, the agency estimates that there would be a $3.6 million one-time cost to set up the tracking systems.

Because of the limited number of devices affected by this regulation, relatively few manufacturers will be affected. Thus, the costs discussed above affect a relatively small number of manufacturers. The overall cost impact is about $176,000 per manufacturer per year ($40.2 million divided by 228 manufacturers), on the average. This overall average cost impact is somewhat misleading, however. Four of the implanted devices, vascular grafts, pacemakers, pacemaker leads and heart valves account for 70 percent of the implantations done annually. These "big four" devices are made by 52 manufacturers. The cost of tracking these four devices is estimated to be $26.3 million per year. Thus, the average impact on each of the 52 "big four" device manufacturers is $506,000. The average cost impact on the remaining 176 manufacturers, after considering separately the impact on the 52 "big four" device manufacturers, is about $79,000 per manufacturer ($40.2 million-$26.3 million = $13.9 million ÷ 176 = 79,000).

FDA has received comments presenting a wide variety of cost estimates for tracking permanent implants. A system used by a pacemaker

manufacturer has been operating for many years with an annual cost of under $5 per patient. Annual costs for systems updated through the periodic sending of post cards or letters have ranged from $10 to $20 per patient per year, after an initial registration cost per patient ranging from $20 to $50. Other industry estimates were $60 to $80 to track a patient with an implant for the life of the device in the patient.

The agency does not know the average time that devices will be tracked. Five years was mentioned as a reasonable lifetime estimate by those in the agency most familiar with the frequently-used implants. Over 60 percent of the "big four" implants are implanted into the elderly; some implants, such as breast implants, are implanted into younger patients, and would be expected to be tracked for more than 20 or 25 years. For this economic assessment, FDA estimated that 8 years might be the average time that a manufacturer might need to track an implant. The requirement is for the life of the device or the life of the patient, whichever is shorter.

The costs of tracking a patient over time depend on the approach taken. One approach is to use a system that has an initial registration of a patient at the time of implant and then uses a periodic followup mechanism (such as a post card, letter, or phone call) to update names and addresses. Another approach uses a health care professional (usually a physician) who remains in periodic contact with his/her patient to update the information. Still another approach is to make use of extant data bases (usually via a contractor) such as those of credit bureaus, motor vehicle registrations, etc. Still another system, which is discussed earlier in this preamble and which would require the passage of enabling legislation, would use one or more national data bases, such as the IRS or SSA data bases. The first-mentioned approach is referred to as the "more expensive" approach; the methods using health professional or existing data bases are referred to as the "cheaper" approaches.

The cost of tracking a device was estimated using a present value approach. This approach attributes the present value of the entire cost to track the device over its lifetime to the year in which the device is implanted. Thus a stream of 8–$10 per year payments would equal some number less than $80 ($10 times 8 years) because the payments in the out years would be worth less than current dollars. Using the average of the $10 and $20 per year estimates ($15) for the estimated average time period (8 years) produces a present value of $88 for the tracking costs over the device's lifetime for those devices utilizing the more expensive system. If it is further assumed that for 30 percent of the implants the cheaper system is used, and that for the remaining 70 percent the more expensive system is used, the average cost to track is $70. This value is consistent with the industry-estimated range of $50 to $80 cited earlier.

For the average implant covered by the tracking regulations, the unit cost is estimated to increase by $70. The cost of a device used outside of the device user facility is estimated to increase by about $12. The general range of costs for these devices is $100 to $13,000 so the increase in unit costs will be significant for some devices.

The cost of a device is usually viewed in the context of the cost of the medical procedure, however. Based on limited data, the costs of the medical procedures associated with the permanently implanted devices are generally over $2,000, and range up to $25,000. It does not appear that this regulation will have a significant economic impact on the cost of the procedure, even though, for a few devices, their costs will be significantly increased. In the short-run, hospitals and/or patients may have to absorb some of the device cost increases because it will take some time for the device cost increases to be included in the diagnosis related group (DRG) reimbursement or third party insurance payment amounts. The demand for the types of procedures using implants is thought to be very inelastic. Thus, the agency expects that, because there would be only a very small decrease in the number of procedures due to the price increase, eventually the costs would be included in the applicable reimbursement or payment system.

The percent of small manufacturers in the medical device industry (those with fewer than 50 employees) is 65 percent. The percent of small manufacturers of the "big four" implants is 46 percent (24 of 52). Thus, the manufacturers most affected by the tracking requirements tend to be larger than the medical device manufacturer population in general.

However, as shown above, the cost impact per manufacturer is considerable for these 52 manufacturers. There are at least two tracking approaches that FDA believes manufacturers will be able to use, and one of the approaches is substantially less expensive than the other. The more expensive approach uses the active involvement of the manufacturer to register and then periodically update the data base. The cheaper approach is to either rely on a health professional to provide the updated information or to rely on existing data bases (e.g., credit bureaus, motor vehicle registrations) to update patient location. The cheaper approach is being used by some manufacturers of pacemakers and pacemaker leads (and perhaps other devices). About half of the 52 manufacturers make these 2 device types and about half of them are small. Thus, many of the small manufacturers affected by the regulation should be able to use a cheaper approach. Only a dozen or so small manufacturers may have to use a more expensive tracking system. In spite of this flexibility, some manufacturers, both large and small, may have difficulty in passing on some or all of the costs of tracking. Although the costs of the regulation may influence attrition or consolidation among device manufacturers, the number of small manufacturers significantly affected by the regulation is relatively small. The agency, therefore, certifies that this regulation does not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1980

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing requirements and instructions, searching existing sources of distribution data, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Medical Devices; Devices Tracking.

Description: FDA is proposing to implement the device tracking requirements of section 519(e) of the act, as added to the act by section 3(b)(1) of the SMDA (Pub. L. 101–629) and as revised by the Medical Devices Amendments of 1992.

The agency is requiring manufacturers, including repackers, relabelers, importers and others, of devices the failure of which would be reasonably likely to have serious adverse health consequences, if the devices either are permanently implantable devices used outside device user facilities, or are otherwise designated by FDA for tracking, to adopt a method of tracking such devices

throughout distribution to the device user or patient. Manufacturers (including others identified as manufacturers), distributors, final distributors, and multiple distributors of the manufacturers' products, are required by the regulation to gather, record, maintain, and furnish to FDA, upon request, the location of the aforementioned types of devices, and the name and address of current users of the devices. The purpose of these tracking requirements is to facilitate identifying the current location of certain types of devices and the identity of all persons using the devices. With this information, manufacturers and FDA can expedite the recall of distributed devices that are dangerous or defective, and can facilitate the timely notification of patients or licensed practitioners of risks associated with such devices.

Description of Respondents: Manufacturers and other parties involved in the manufacture and distribution of certain devices.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

Section	Annual number of responses	Average burden per responses (hours)	Total annual burden (hours)
821.25(a)	[1] 228	176	40,128
821.25(b)	228	473	108,000
821.25(c)	228	40	9,120
821.30(c)	200,000	0.2	40,000
Total			197,248

[1] Section 821.25(a) is a one-time burden for setting up a tracking system. Therefore, the total annual recordkeeping hours were averaged over 3 years.

ESTIMATED ANNUAL REPORTING BURDEN

Section	Annual number of responses	Average burden per response (hours)	Total annual burden (hours)
821.25(d)	8	4	32

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burden, should direct to FDA's Dockets Managements Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503. Attn: Officer for FDA.

VI. Technical Amendments

As discussed earlier, the 1992 amendments changed the effective date of the tracking regulations. Accordingly, FDA is amending the regulation to change the effective date in § 821.1(c). In addition, FDA is announcing that the date upon which requests for exemptions or variances from tracking requirements must be submitted is August 29, 1993.

FDA is correcting a reference in § 821.25(b) to § 821.25(a)(3)(iii) that it had previously overlooked. The reference should have been to § 821.25(a)(3)(iv). Finally, FDA is correcting the designation for § 821.30(c)(3), which should have been designated § 821.30(d). The text of part 821, including the technical amendments is set forth below, in its entirety. The amendments to § 821.20 are in a final rule published elsewhere in this issue of the **Federal Register**.

List of Subjects in 21 CFR Part 821

Device tracking, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 821 is amended as follows:

1. Part 821 is revised to read as follows:

PART 821—MEDICAL DEVICE TRACKING REQUIREMENTS

Subpart A—General Provisions

Sec.

821.1 Scope.
821.2 Exemptions and variances
821.3 Definitions.
821.4 Imported devices.

Subpart B—Tracking Requirements

821.20 Devices subject to tracking.
821.25 Device tracking system and content requirements: manufacturer requirements.

Subpart C—Additional Requirements and Responsibilities

821.30 Tracking obligations of persons other than device manufacturers: distributor requirements.

Subpart D—Records and Inspections

821.50 Availability.
821.55 Confidentiality.
821.60 Retention of records.

Authority: Secs. 301, 501, 502, 510, 515, 518, 519, 701, and 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, and 374).

Subpart A—General Provisions

§ 821.1 Scope.

(a) The regulations in this part implement section 519(e) of the Federal Food, Drug, and Cosmetic Act (the act). which requires the adoption of a method of device tracking by any person who registers under section 510 of the act and is engaged in the manufacture and distribution of devices the failure of which would be reasonably likely to have serious adverse health consequences if the devices are life-sustaining or life-supporting devices used outside of a device user facility or are permanently implantable devices. This part also applies to any other device that the Food and Drug Administration (FDA) designates as requiring a method of tracking to protect

the public health. A device subject to this part either by statutory requirement or by FDA designation is referred to herein as a "tracked device."

(b) These regulations are intended to ensure that tracked devices can be traced from the device manufacturing facility to the person for whom the device is indicated, that is, the patient. Effective tracking of devices from the manufacturing facility, through the distributor network (including distributors, retailers, rental firms and other commercial enterprises, device user facilities and licensed practitioners) and, ultimately, to any person for whom the device is intended is necessary for the effectiveness of remedies prescribed by the act, such as patient notification (section 518(a) of the act) or device recall (section 518(e) of the act). Although these regulations do not preclude a manufacturer from involving outside organizations in that manufacturer's device tracking effort, the legal responsibility for complying with this part rests with manufacturers who must register under section 510 of the act, and that responsibility cannot be altered, modified, or in any way abrogated by contracts or other agreements.

(c) Each manufacturer of a tracked device shall implement a method of tracking devices by August 29, 1993.

(d) The primary burden for ensuring that the tracking system works rests upon the manufacturer. A manufacturer or any other person, including a distributor, final distributor, or multiple distributor, who distributes a device subject to tracking, who fails to comply with any applicable requirement of section 519(e) of the act or of this part, or any person who causes such failure, misbrands the device within the meaning of section 501(t)(2) of the act and commits a prohibited act within the meaning of sections 301(e) and 301(q)(1)(B) of the act.

(e) Any person subject to this part who permanently discontinues doing business is required to notify FDA at the time the person notifies any government agency, court, or supplier, and provide FDA with a complete set of its tracking records and information. However, if a person ceases distribution of a tracked device but continues to do other business, that person continues to be responsible for compliance with this part unless another person, affirmatively and in writing, assumes responsibility for continuing the tracking of devices previously distributed under this part. Further, if a person subject to this part goes out of business completely, but other persons acquire the right to manufacture or distribute tracked devices, those other persons are deemed to be responsible for continuing the tracking responsibility of the previous person under this part.

§ 821.2 Exemptions and variances.

(a) A manufacturer, importer, or distributor may seek an exemption or variance from one or more requirements of this part.

(b) A request for an exemption or variance shall be submitted in the form of a petition under § 10.30 of this chapter and shall comply with the requirements set out therein, except that a response shall be issued in 90 days. The Director, Office of Compliance and Surveillance, Center for Devices and Radiological Health (CDRH), shall issue responses to requests under this section. The petition shall also contain the following:

(1) The name of the device and device class and representative labeling showing the intended use(s) of the device;

(2) The reasons that compliance with the tracking requirements of this part is unnecessary;

(3) A complete description of alternative steps that are available, or that the petitioner has already taken, to ensure that an effective tracking system is in place; and

(4) Other information justifying the exemption or variance.

(c) An exemption or variance is not effective until the Director, Office of Compliance and Surveillance, CDRH, approves the request under § 10.30(e)(2)(i) of this chapter.

(d) For petitions received under this section before August 29, 1993, FDA will, within 60 days, approve or disapprove the petition or extend the effective date of this part for the device that is the subject of the petition. Any extension that FDA grants to the effective date will be based upon the additional time FDA needs to complete its review of the petition.

§ 821.3 Definitions.

The following definitions and terms apply to this part:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et seq., as amended.

(b) *Importer* means the initial distributor of an imported device who is required to register under section 510 of the act and § 807.20 of this chapter. "Importer" does not include anyone who only performs a service for the person who furthers the marketing, i.e., brokers, jobbers, or warehousers.

(c) *Manufacturer* means any person, including any importer, repacker and/or relabeler, who manufactures, prepares, propagates, compounds, assembles, or processes a device or engages in any of the activities described in § 807.3(d) of this chapter.

(d) *Device failure* means the failure of a device to perform or function as intended, including any deviations from the device's performance specifications or intended use.

(e) *Serious adverse health consequences* means any significant adverse experience related to a device, including device-related events which are life-threatening or which involve permanent or long-term injuries or illnesses.

(f) *Permanently implantable device* means a device that is intended to be placed into a surgically or naturally formed cavity of the human body to continuously assist, restore, or replace the function of an organ system or structure of the human body throughout the useful life of the device. The term does not include any device which is intended and used for temporary purposes or which is intended for explantation.

(g) *Life-supporting or life-sustaining device used outside a device user facility* means a device which is essential, or yields information that is essential, to the restoration or continuation of a bodily function important to the continuation of human life that is intended for use outside a hospital, nursing home, ambulatory surgical facility, or diagnostic or outpatient treatment facility. Physicians' offices are not device user facilities and, therefore, devices used therein are subject to tracking if they otherwise satisfy the statutory and regulatory criteria.

(h) *Distributor* means any person who furthers the distribution of a device from the original place of manufacture to the person who makes delivery or sale to the ultimate user, i.e., the final or multiple distributor, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package.

(i) *Final distributor* means any person who distributes a tracked device intended for use by a single patient over the useful life of the device to the patient. This term includes, but is not limited to, licensed practitioners, retail pharmacies, hospitals, and other types of device user facilities.

(j) *Distributes* means any distribution of a tracked device, including the charitable distribution of a tracked device. This term does not include the distribution of a device under an effective investigational device exemption in accordance with section 520(g) of the act and part 812 of this

chapter or the distribution of a device for teaching, law enforcement, research, or analysis as specified in § 801.125 of this chapter.

(k) *Multiple distributor* means any device user facility, rental company, or any other entity that distributes a life-sustaining or life-supporting device intended for use by more than one patient over the useful life of the device.

(l) *Licensed practitioner* means a physician, dentist, or other health care practitioner licensed by the law of the State in which he or she practices to use or order the use of the tracked device.

(m) Any term defined in section 201 of the act shall have the same definition in this part.

§ 821.4 Imported devices.

For purposes of this part, the importer of a tracked device shall be considered the manufacturer and shall be required to comply with all requirements of this part applicable to manufacturers. Importers must keep all information required under this part in the United States.

Subpart B—Tracking Requirements

§ 821.20 Devices subject to tracking.

(a) A manufacturer of any device the failure of which would be reasonably likely to have a serious adverse health consequence, that is either a life-sustaining or life-supporting device used outside of a device user facility or a permanently implantable device, or a manufacturer of any other device that FDA, in its discretion, designates for tracking, shall track that device in accordance with this part.

(b) Manufacturers have the responsibility to identify devices that meet the criteria for tracking and to initiate tracking. By way of illustration and to provide guidance, FDA has set out below a list of example devices it regards as subject to tracking under the criteria set forth in this regulation.

(1) PERMANENTLY IMPLANTABLE DEVICES

21 CFR	Classification
870.3450	Vascular graft prosthesis of less than 6 millimeters diameter
870.3460	Vascular graft prosthesis of 6 millimeters and greater diameter
870.3545	Ventricular bypass (assist) device
870.3610	Implantable pacemaker pulse generator
870.3680	Cardiovascular permanent pacemaker electrode
870.3800	Annuloplasty ring
870.3925	Replacement heart valve
(no cite)	Automatic implantable cardioverter/defibrillator
878.3720	Tracheal prosthesis
882.5820	Implanted cerebellar stimulator
882.5830	Implanted diaphragmatic/phrenic nerve stimulator
(no cite)	Implantable infusion pumps

(2) LIFE-SUSTAINING OR LIFE-SUPPORTING DEVICES USED OUTSIDE DEVICE USER FACILITIES

21 CFR	Classification
868.2375	Breathing frequency monitors (apnea monitors) (including ventilatory efforts monitors)
868.5895	Continuous ventilator
870.5300	DC-defibrillator and paddles

(c) FDA designates the following devices as subject to tracking. Manufacturers must track these devices in accordance with this part.

21 CFR	Classification
878.3530	Silicone inflatable breast prosthesis
878.3540	Silicone gel-filled breast prosthesis
876.3750	Testicular prosthesis, silicone gel-filled
(no cite)	Silicone gel-filled chin prosthesis
(no cite)	Silicone gel-filled angel chik reflux valve
880.5725	Infusion pumps (Electromechanical only)

(d) FDA, when responding to premarket notification submissions and approving premarket approval applications, will notify the sponsor that FDA believes the device meets the criteria of section 519(e)(1) and therefore should be tracked. FDA will also, after notifying the sponsor, publish a notice in the **Federal Register** announcing that FDA believes a new generic type of device is subject to tracking and soliciting comment on FDA's position. If the device is a new generic type of device not already on the example list above, FDA will add it to this list.

§ 821.25 Device tracking system and content requirements: manufacturer requirements.

(a) A manufacturer of a tracked device shall adopt a method of tracking for each such type of device that it distributes that enables a manufacturer to provide FDA with the following information in writing for each tracked device distributed:

(1) Except as required by order under section 518(e) of the act, within 3 working days of a request from FDA, prior to the distribution of a tracked device to a patient, the name, address, and telephone number of the distributor, multiple distributor, or final distributor holding the device for distribution and the location of the device;

(2) Within 10 working days of a request from FDA for life-sustaining or life-supporting devices used outside a device user facility that are intended for use by a single patient over the life of the device and permanent implants that are tracked devices, after distribution to or implantation in a patient:

(i) The lot number, batch number, model number, or serial number of the device or other identifier necessary to provide for effective tracking of the devices;

(ii) The date the device was shipped by the manufacturer;

(iii) The name, address, telephone number, and social security number (if available) of the patient receiving the device;

(iv) The date the device was provided to the patient;

(v) The name, mailing address, and telephone number of the prescribing physician;

(vi) The name, mailing address, and telephone number of the physician regularly following the patient if different than the prescribing physician; and

(vii) If applicable, the date the device was explanted and the name, mailing address, and telephone number of the explanting physician; the date of the patient's death; or the date the device was returned to the manufacturer, permanently retired from use, or otherwise permanently disposed of.

(3) Except as required by order under section 518(e) within 10 working days of a request from FDA for life-sustaining or life-supporting devices used outside device user facilities that are intended for use by more than one patient and that are tracked devices, after the distribution of the device to the multiple distributor:

(i) The lot model number, batch number, serial number of the device or other identifier necessary to provide for effective tracking of the device;

(ii) The date the device was shipped by the manufacturer;

(iii) The name, address, and telephone number of the multiple distributor;

(iv) The name, address, telephone number, and social security number (if available) of the patient using the device;

(v) The location of the device;

(vi) The date the device was provided for use by the patient;

(vii) The name, address, and telephone number of the prescribing physician; and

(viii) If and when applicable, the date the device was returned to the

manufacturer, permanently retired from use, or otherwise permanently disposed of.

(b) A manufacturer of a tracked device shall keep current records in accordance with its standard operating procedure of the information identified in paragraphs (a)(1), (a)(2) and (a)(3)(i) through (a)(3)(iii) of this section on each tracked device released for distribution for as long as such device is in use or in distribution for use.

(c) A manufacturer of a tracked device shall establish a written standard operating procedure for the collection, maintenance, and auditing of the data specified in paragraphs (a) and (b) of this section. A manufacturer shall make this standard operating procedure available to FDA upon request. A manufacturer shall incorporate the following into the standard operating procedure:

(1) Data collection and recording procedures, which shall include a procedure for recording when data which is required under this part is missing and could not be collected and the reason why such required data is missing and could not be collected;

(2) A method for recording all modifications or changes to the tracking system or to the data collected and maintained under the tracking system, reasons for any modification or change, and dates of any modification or change. Modification and changes included under this requirement include modifications to the data (including termination of tracking), the data format, the recording system, and the file maintenance procedures system; and

(3) A quality assurance program that includes an audit procedure to be run for each device product subject to tracking, at not less than 6-month intervals for the first 3 years of distribution and at least once a year thereafter. This audit procedure shall provide for statistically relevant sampling of the data collected to ensure the accuracy of data and performance testing of the functioning of the tracking system.

(d) When a manufacturer becomes aware that a distributor, final distributor, or multiple distributor has not collected, maintained, or furnished any record or information required by this part, the manufacturer shall notify the FDA district office responsible for the area in which the distributor, final distributor, or multiple distributor is located of the failure of such persons to comply with the requirements of this part. Manufacturers shall have taken reasonable steps to obtain compliance by the distributor, multiple distributor, or final distributor in question before notifying FDA.

(e) A manufacturer may petition for an exemption or variance from one or more requirements of this part according to the procedures in § 821.2 of this chapter.

Subpart C—Additional Requirements and Responsibilities

§ 821.30 Tracking obligations of persons other than device manufacturers: distributor requirements.

(a) A distributor, final distributor, or multiple distributor of any tracked device shall, upon purchasing or otherwise acquiring any interest in such a device, promptly provide the manufacturer tracking the device with the following information:

(1) The name and address of the distributor, final distributor or multiple distributor;

(2) The lot number, batch number, model number, or serial number of the device or other identifier used by the manufacturer to track the device;

(3) The date the device was received;

(4) The person from whom the device was received;

(5) If and when applicable, the date the device was explanted, the date of the patient's death, or the date the device was returned to the distributor, permanently retired from use, or otherwise permanently disposed of.

(b) A final distributor, upon sale or other distribution of a tracked device for use in or by the patient, shall promptly provide the manufacturer tracking the device with the following information:

(1) The name and address of the final distributor,

(2) The lot number, batch number, model number, or serial number of the device or other identifier used by the manufacturer to track the device;

(3) The name, address, telephone number, and social security number (if available) of the patient receiving the device;

(4) The date the device was provided to the patient or for use in the patient;

(5) The name, mailing address, and telephone number of the prescribing physician;

(6) The name, mailing address, and telephone number of the physician regularly following the patient if different than the prescribing physician; and

(7) When applicable, the date the device was explanted and the name, mailing address, and telephone number of the explanting physician, the date of the patient's death, or the date the device was returned to the manufacturer, permanently retired from use, or otherwise permanently disposed of.

(c)(1) A multiple distributor shall keep written records of the following each time such device is distributed for use by a patient:

(i) The lot number, batch number, or model number, or serial number of the device or other identifier used by the manufacturer to track the device;

(ii) The name, address, telephone number, and social security number (if available) of the patient using the device;

(iii) The location of the device;

(iv) The date the device was provided for use by the patient;

(v) The name, address, and telephone number of the prescribing physician;

(vi) The name, address, and telephone number of the physician regularly following the patient if different than the prescribing physician; and

(vii) When applicable, the date the device was permanently retired from use or otherwise permanently disposed of.

(2) Except as required by order under section 518(e) of the act, any person who is a multiple distributor subject to the recordkeeping requirement of paragraph (c)(1) of this section shall, within 5 working days of a request from the manufacturer or within 10 working days of a request from FDA for the information identified in paragraph (c)(1) of this section, provide such information to the manufacturer or FDA.

(d) A distributor, final distributor, or multiple distributor shall make any records required to be kept under this part available to the manufacturer of the tracked device for audit upon written request by an authorized representative of the manufacturer.

(e) A distributor, final distributor, or multiple distributor may petition for an exemption or variance from one or more requirements of this part according to the procedures in § 821.2.

Subpart D—Records and Inspections

§ 821.50 Availability.

(a) Manufacturers, distributors, multiple distributors, and final distributors shall, upon the presentation by an FDA representative of official credentials and the issuance of Form FD 482 at the initiation of an inspection of an establishment or person under section 704 of the act, make each record and all information required to be collected and maintained under this part and all records and information related to the events and persons identified in such records available to FDA personnel.

(b) Records and information referenced in paragraph (a) of this

section shall be available to FDA personnel for purposes of reviewing, copying, or any other use related to the enforcement of the act and this part. Records required to be kept by this part shall be kept in a centralized point for each manufacturer or distributor within the United States.

§ 821.55 Confidentiality.

(a) Records and other information submitted to FDA under this part shall be protected from public disclosure to the extent permitted under part 20 of this chapter, and in accordance with § 20.63 of this chapter, information contained in such records that would identify patient or research subjects shall not be available for public disclosure except as provided in those parts.

(b) Patient names or other identifiers may be disclosed to a manufacturer or other person subject to this part or to a physician when the health or safety of the patient requires that such persons have access to the information. Such notification will be pursuant to agreement that the record or information will not be further disclosed except as the health aspects of the patient requires. Such notification does not constitute public disclosure and will not trigger the availability of the same information to the public generally.

§ 821.60 Retention of records.

Persons required to maintain records under this part shall maintain such records for the useful life of each tracked device they manufacture or distribute. The useful life of a device is the time a device is in use or in distribution for use. For example, a record may be retired if the person maintaining the record becomes aware of the fact that the device is no longer in use, has been explanted, returned to the manufacturer, or the patient has died.

Dated: July 8, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19472 Filed 8–11–93; 11:24 am]

BILLING CODE 4160–01–F

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21 CFR Part 821

[Docket No. 91N–0296]

Medical Devices; Illustrative and Designated Lists for Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule and request for comments.

SUMMARY: The Food and Drug Administration (FDA) is amending the medical device tracking regulations to add the temporo-mandibular joint prostheses to the illustrative list of devices and the penile inflatable implant to the list of devices designated for tracking. These devices are being added to the illustrative and designated device lists based on the significance of the risk to health posed by their use. This action requires manufacturers to track these devices after distribution so that they can be located in the event of a recall or patient notification action.FDA requests comments on these changes. Elsewhere in this issue of the **Federal Register**, the agency is announcing notification of the change of status of the device tracking regulations and is suspending the effective date of the regulations until August 29, 1993.

DATES: These regulations are effective August 29, 1993. Written comments by September 15, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

The SMDA (Pub. L. 101–629), which became law on November 28, 1990, added section 519(e) (21 U.S.C. 360i(e)) to the Federal Food, Drug, and Cosmetic Act (the act). Section 519(e) of the act requires that manufacturers track certain devices from the manufacturer through the distribution chain to the patient using the device. Under section 519(e) of the act, manufacturers must track life-supporting or life-sustaining devices that are used outside a device user facility and permanently implantable devices, if the failure of these devices would be reasonably likely to have serious adverse health consequences. Section 519(e) of the act also gives FDA the authority to designate other devices to be subject to tracking.

In the **Federal Register** of March 27, 1992 (57 FR 10702), FDA published a proposed rule to implement tracking. The period for submitting comments in response to the March 27, 1992, proposal closed on May 26, 1992. Many comments raised objections to many devices identified as types of devices requiring tracking.

In response to comments received on the March 27, 1992, proposal, FDA revised the March 27, 1992, proposed rule, and on May 27, 1992, the agency issued, put on public display, and filed in the public administrative record in FDA's Dockets Management Branch, a revised proposed rule that withdrew the March 27, 1992, proposed rule and set forth revised proposed regulations for tracking medical devices including changes to the illustrative list of devices subject to tracking and the list of designated devices. On May 28, 1992, the agency issued, put on public display, and filed in the public administrative record, a document that announced that the proposed regulations issued the day before had become the final regulations on that date, by operation of the SMDA. The agency also issued the revised tracking regulations as a final rule. Both the May 27, 1992, revised proposed tracking rule and the May 28, 1992, final tracking rule appeared in the **Federal Register** of May 29, 1992 (57 FR 22971, 22966).

On June 16, 1992, the 1992 Amendments (Pub. L. 102–300) became law. The 1992 Amendments modified the device tracking provisions of the SMDA to: (1) Change the previous May 28, 1992, deadline for issuing final tracking regulations; (2) clarify the date on which section 519(e) of the act becomes effective; and (3) make the regulation which became final by operation of the SMDA on May 28, 1992, a proposed regulation.

Elsewhere in this issue of the **Federal Register**, in a document entitled "Medical Devices; Device Tracking," FDA is announcing that the tracking regulations have become final by operation of law and is suspending the effective date of the device tracking regulations until August 29, 1993.

II. Discussion

FDA received more than 1,700 comments on the March 27, 1992, proposed rule and the subsequent revised proposed rule (published in the **Federal Register** of May 29, 1992). Most of these comments requested the deletion of various devices from the illustrative list of devices subject to tracking. FDA addressed many of the comments in the preamble to the revised proposed rule. Other comments are addressed elsewhere in this issue of the **Federal Register**. FDA notes that, to the extent that the preambles to the proposed and revised proposed rules discuss the criteria for determining whether devices are subject to tracking, or comments on the criteria, these preambles still provide useful guidance. FDA also intends to issue a question

and answer document to clarify certain issues regarding the tracking requirements.

A. Statutory Scheme

1. Devices Subject to Tracking Under Section 519(e)(1) of the Act

Section 519(e)(1) of the act provides for the mandatory tracking of those devices that meet its criteria. However, FDA recognizes that, as the agency charged with implementing and enforcing section 519(e) of the act, its interpretation of the statutory terms and its views on the application of section 519(e)(1) of the act are entitled to great weight. Thus, FDA expects manufacturers to decide which devices are subject to mandatory tracking based upon the guidance issued by FDA in the rule, especially the definitions; in this preamble (which includes an illustrative list of example devices that FDA believes are subject to tracking under section 519(e)(1) of the act), and in future guidance from FDA. To ensure that the list of example devices is readily available to the public in conjunction with the definitions of the key terms, FDA is incorporating this illustrative list in new § 821.20(b)(1) and (b)(2).

In addition, FDA, when clearing premarket notification submissions (510(k)'s) or approving premarket approval applications (PMA's), will notify the person receiving clearance or approval that FDA believes the device is subject to tracking. This notification will be given in writing, but will not be a part of the 510(k) order or the PMA approval order. In addition, FDA will notify the public (through publication of a notice in the **Federal Register**) that FDA believes a new generic type of device is subject to tracking and will solicit comments from the public on the agency's position. In the case of devices that are the subject of approved PMA's, this notification will be given in the same issue of the **Federal Register** as the notice of the PMA approval order that is published after FDA's approval of the PMA for the device. In the case of 510(k) devices, this notice will be published as soon as possible following notification of the manufacturer that a device is substantially equivalent. New generic types of devices that FDA identifies as subject to tracking through the premarket approval and clearance processes will also be added to the list of example devices set out in the regulation.

FDA believes that making the public aware of the fact that FDA believes a device is subject to tracking and soliciting comment from the public will serve two distinct purposes. First, it will serve to notify manufacturers of substantially equivalent devices that FDA believes that the tracking requirements of section 519(e) of the act apply to their devices, while also serving to notify those in the distribution chain of the tracking requirement. Secondly, it will provide consumers and manufacturers and other persons affected by FDA's determination, as well as the manufacturer(s) of the device in question, with the opportunity to share information and views with FDA, thereby ensuring that FDA's enforcement of the tracking provision proceeds deliberately and publicly, based upon complete and balanced information.

2. Designated Devices Subject to Tracking Under Section 519(e)(2) of the Act

The agency will use its discretionary authority to designate and require the tracking of devices under section 519(e)(2) of the act to protect the public health. In assessing whether to designate a device to be tracked under section 519(e)(2) of the act, the agency will focus on the significance of risks to health posed by device use, especially the potential for serious injury, harm, or hazard to the public. Devices that FDA anticipates it will need to designate to be tracked are devices that demonstrate (or may demonstrate) recurrent, unpredictable, unexpected, or widespread failures, when such failures are hazardous or potentially hazardous. In the tracking context, the agency will consider a device to be hazardous if the device presents a risk of injury, death, or other serious adverse effects under the conditions of its intended use. The agency believes it is consistent with the intent of section 519(e)(2) of the act and with the general purpose of the SMDA to designate devices that present such risks to protect the public from devices that are potentially unsafe or ineffective.

The agency will designate a particular device or generic type of device under section 519(e)(2) of the act by written notice, in the form of a letter, issued to the manufacturer(s). In addition, the agency will publish in the **Federal Register** a notice of the agency's designation of a generic type of device for tracking under section 519(e)(2) of the act and will, as with devices subject to tracking under section 519(e)(1) of the act, solicit comment from the public. The agency considers the designation under section 519(e)(2) of the act to be within the agency's discretionary authority and not subject to the rulemaking procedures prescribed by the Administrative Procedure Act.

3. General Comments

a. *Cost.* Many comments suggested that devices on the illustrative list of devices subject to tracking should not be subject to tracking. The general argument was that the cost of tracking was not warranted in light of the perceived benefit. While FDA acknowledges the concerns inherent in these comments, section 519(e) of the act does not identify cost or inconvenience of tracking as factors to be considered when determining if a device is subject to tracking. FDA has done its best, however, to apply and interpret the statutory requirements in a rational manner and to not impose unnecessary requirements.

b. *Current good manufacturing practices.* Several comments suggested that certain devices should not be included in the illustrative list of devices because, according to the comments, they are already subject to tracking under the current good manufacturing practice (CGMP) regulations.

FDA disagrees with these comments. Section 820.151 of the CGMP regulations (21 CFR 821.151) requires manufacturers to maintain records of distribution only to the first consignee. This is clearly not sufficient for tracking purposes under section 519(e) of the act as these records would not provide sufficient information for effective recalls and notifications under section 518(a) and (e) of the act.

c. *Patient privacy.* Many comments complained that the tracking requirements violate principles of physician-patient confidentiality.

FDA has a long-standing policy of carefully guarding the privacy of individual patients by fully observing the provisions of the Freedom of Information Act and the Privacy Act. The final regulations place restrictions on FDA disclosure of patient information in keeping with these laws.

B. Particular Devices

1. Vascular Grafts (Section 519(e)(1) of the Act)

FDA received comments on whether vascular grafts should be tracked. Almost all of the individuals commenting were vascular, transplant, or cardiovascular surgeons. They commented on behalf of themselves, their medical institutions, their professional societies, and their patients. Comments were also received from hospital or medical center administrators.

Almost all of these comments stated that tracking for vascular graft devices should be modified or eliminated. However, several surgeons expressed general agreement with tracking vascular grafts. Moreover, many surgeons and manufacturers acknowledged that at least some vascular grafts should be tracked because of their intended use.

Many surgeons and manufacturers commented that section 519(e) of the act does not require tracking for vascular grafts even though the devices meet the definition of permanent implant (new § 821.3(f)) because of their overall low historical rate of serious complications. The comments argued that serious adverse health consequences from graft failures could never be "more likely than not to occur" from device failure (see 57 FR 10702 at 10704, March 27, 1992) if FDA considers as a whole all the various types, sizes, and clinical uses of vascular grafts as the total number of those grafts, when compared to those used for mandatory circulatory sustaining functions such as various cardiac repair, and aorto-coronary renal, or carotid uses.

FDA disagrees in part with these comments. "Serious adverse health consequences" are events which result in permanent or long-term injury or illness (new § 821.3(e)) that are not generally "treatable or reversible by standard medical techniques proximate in time to the injury." (S. Rept. 613, 101st Cong., 2d sess. 19 (1990)). FDA agrees that vascular grafts used to replace or assist peripheral vasculature or used solely for vascular access do not meet the statutory requirements that failure of the device would be likely to: (1) Result in permanent or long-term illness or injury, and (2) not be treatable or reversible by standard medical techniques, proximate in time to the illness or injury.

However, FDA believes that the vascular grafts used for cardiac repair or for replacement of aorto-coronary, aortic renal, or carotid artery function do require tracking under section 519(e)(1) of the act and the implementing definitions because, when used for these purposes, the graft would, if it failed, result in serious adverse health consequences. Moreover, because the comments expressed near universal agreement that these kinds of vascular grafts usages are subject to tracking, FDA does not believe it would be appropriate to remove them from the illustrative list. However, due to the fact that only some uses of vascular grafts are subject to tracking, FDA is receptive to individual manufacturers' tracking protocols that accurately identify and track only those grafts that fall within the statutory criteria. FDA would be willing to consider tracking protocols that exclude vascular grafts used in peripheral locations or for vascular access, if the manufacturer can ensure that those graft uses subject to tracking are reliably and consistently identified and tracked. FDA believes that these protocols would need to identify how the labeling would distinguish among the various uses of the device.

2. Infusion Pumps (Section 519(e)(2) of the Act)

FDA received comments concerning the tracking of infusion pumps from individuals, corporations, hospitals, and associations representing various professional groups in the health care sector. Almost all of the individuals who commented are health care providers, i.e., physicians and nurses. They submitted their views on behalf of themselves, their medical institutions, their professional societies, and their patients. Comments were also received from hospital and medical center administrators. Many comments, mostly those from health care facilities, objected to the inclusion of electromechanical infusion pumps on the list of devices designated for tracking by FDA. The comments objected not to the requirement to track these devices, but to the fact that, as designated devices, the devices would have to be tracked within device user facilities. The comments said that tracking within device user facilities would be unnecessarily burdensome because: (1) These devices may be used on several different patients per day; (2) in the case of a recall or notification, the devices can be found within a device user facility; and (3) Congress intended that devices used within device user facilities not be tracked.

FDA agrees in part with these comments. Infusion pumps are used both within and outside device user facilities. As noted in the preamble to the reproposed rule, FDA believes that these devices, if they fail, would present a risk of serious adverse health consequences, and that this risk exists even if the pump is not being used to support or sustain life. However, FDA believes, based on its experience and the comments, that these devices can be located within device user facilities, when there is a recall or notification, without a tracking requirement in effect when used within such facilities. FDA, therefore, is keeping infusion pumps on the list of designated devices but is not requiring that they be tracked within device user facilities. If a device is used within a device user facility, the device must be tracked down to the device user facility who must comply with the requirement of § 821.30(b)(1) and (b)(2). If the device is used outside a device user facility, the distributor who provides the device to a patient shall keep records of the device's location and report this information to the manufacturer, as necessary, in accordance with § 821.30(c). This applies even if a device user facility functions as a distributor in providing the patient a device for use outside the facility.

FDA believes that the approach described above will adequately provide for notifications and recalls and is consistent with congressional intent. However, if FDA determines in the future, for these devices or any other device, that tracking within device user facilities is necessary, it will require such tracking. While tracking is mandatory only for life-sustaining or life-supporting devices used outside device user facilities, that does not mean that devices used inside device user facilities can never be tracked. In section 519(e)(2) of the act, Congress clearly gave FDA the authority to designate for tracking devices used within device user facilities.

Finally FDA notes that it has removed the descriptive phrase, "Electromechanical only," from the list in the regulations. FDA has determined that the phrase was unnecessary in light of the terms of the classification regulation for infusion pumps.

3. Defibrillators (Section 519(e)(1) of the Act)

FDA received comments from corporations concerning the placement of defibrillators on the illustrative list of devices for which tracking is mandated by statute. Three comments agreed that defibrillators used within the home fall within the scope of the tracking regulation. However, these comments also argued that defibrillators sold or leased to emergency medical services should not be tracked to the patient level. The comments claimed that there would be no benefit to this, as the patient would not have the device in his or her possession and would not need to be contacted in the event of a problem. According to the comments, the organization which had purchased the device would be the appropriate party to notify.

One comment argued that disposable pads for defibrillators need not be tracked and should be excluded from the tracking requirement. The comment argued that defects in pads are usually materials-related, that any defects would be common to an entire lot, and

that recall of the entire lot would be the most practical way to limit the exposure of patients to defective pads. Another comment suggested that the paddle alone be tracked, and that disposable electrodes and connecting cables not be subject to tracking. This comment urged that the "paddle" be defined as that portion of the defibrillator containing the control that will release energy to the patient.

FDA stresses that what is important here is to be able to locate a tracked device when there is a recall or a notification. In the case of these defibrillators used within device user facilities, tracking the location of defibrillators to the user should achieve the purpose of the statute. If, even with this clarification, affected manufacturers or other entities have difficulty complying with the rule, FDA invites them to seek, either individually or together, an exemption or variance from the regulation which addresses this concern but guarantees the ability to locate defibrillators for recalls or notifications.

With respect to pads, FDA's reports indicate that serious adverse events are often associated with the disposable pads as well as the defibrillator itself. FDA, therefore, believes that it is necessary that the pads be tracked as well as the defibrillator because a failure of the pads can cause serious adverse health consequences. FDA notes that the regulation presently allows recalling defibrillator pads by lot number, if appropriate.

4. Temporo-mandibular Joints (Section 519(e)(1) of the Act)

On its own initiative, FDA has modified the illustrative list of devices for which tracking is mandated by statute to include temporo-mandibular joint (TMJ) prostheses. This includes the total TMJ prosthesis, the glenoid fossa disc prosthesis, the mandibular condyle prosthesis, and the interarticular disc prosthesis. FDA believes that TMJ prostheses are permanently implantable devices that are intended to function throughout the useful life of the device. Further, the high number of irreversible, extremely serious adverse events resulting from the failure of the device demonstrate that failures of this device are reasonably likely to result in adverse health consequence within the meaning of section 519(e)(1) of the act. For example, these implants have been associated with permanent loss of bone extending through the glenoid fossa into the middle cranial space. In lay terms, the failure of the implants can result in loss of mandibular bone or jaw structure, which is not reversible. In addition, device disintegration in situ can result in the permanent development of an ongoing localized inflammatory process with granuloma formation and/or other foreign body reaction that cannot be reversed or for which intervention, timely or not, is not curative or preventive. FDA believes that the seriousness of the device failure reports and the high number of such reports in the medical device reporting (MDR) and problem reporting program (PRP) systems, warrants the device's inclusion on the list. Moreover, while failure of the device is not immediately life-threatening, nevertheless, permanent harm to the patient is more likely than not to result from device failure. In accordance with its commitment to seek comments when announcing that devices are subject to tracking under section 519(e) of the act, FDA solicits comments on the agency's position.

5. Penile Inflatable Implant (Section 519(e)(2) of the Act)

On its own initiative, FDA has modified the illustrative list of devices for which tracking is designated to include the penile inflatable implant. FDA has determined that the relatively high number of device failure reports in the MDR and PRP systems when compared to the number of devices in use warrants this device's inclusion on the list. Further, FDA has concerns regarding the use of silicone oils, gels, and elastomers in the manufacture of these devices as demonstrated by the inclusion of other elastomer and gel-filled implants on the list of devices designated for tracking. Among the risks connected with penile prostheses are: Migration and extrusion of the implant; fibrous capsule formation; mechanical malfunctions; carcinogenicity; and immune-related connective tissue disorders. Because of these concerns about the use of silicone in implants and the other problems associated with the use of these devices, FDA has determined that it is appropriate that these devices be included on the "Designated List" of devices requiring tracking. FDA solicits comments on the agency's position that, under section 519(e)(2) of the act, this device is subject to tracking.

6. Intraocular Lenses

One comment suggested that intraocular lenses (IOL's) be included on the list based upon the history of adverse events related to the use of rigid anterior chamber IOL's. These events have included the need for explanation of the device, migration, corneal transplant surgery following corneal endothelial attrition several years after implantation, and the development of retinal inflammation with impairment of vision in the implicated eye. The comment stated that, despite timely medical intervention some patients have lost vision due to IOL failures. The comment admitted that the rate of complications is relatively low but argued that tracking is needed due to limitations in the premarket approval process, including use of a defined sample size less than the ultimate recipient population, the limited duration of data collection in premarket approval studies, and investigator selection.

FDA does not believe at this time that IOL's meet the statutory criteria for mandatory tracking or that they should be designated for tracking. IOL's are clearly permanently implantable devices. However, the likelihood of blindness or significant loss of vision from device failure is low. Further, timely medical intervention would result in the reversal of the more common medical complications due to unexpected device failure to function. FDA believes that the relatively low rate of complications argues against including IOL's on the list of designated devices.

7. Spinal Interlaminal Fixation Orthosis and Spinal Intervertebral Fixation Orthosis

FDA needs to correct an erroneous statement that was inadvertently included in the preamble to the May 29, 1992, revised proposal. FDA stated with regard to spinal interlaminal and intervertebral body fixation devices that, "[A]fter the completion of healing by bone growth, spinal fusion, or other process, the device no longer serves as the primary support." Although no comments received in response to the May 29, 1992, revised proposal took exception to this statement, the quoted statement is scientifically inaccurate. When two materials of different moduli are loaded in parallel (as is the case for a spinal bone fusion mass and a spinal implant), the higher modulus material (a spinal implant) carries the larger portion of the load than the lower modulus material (a spinal bone fusion mass). Even upon completion of formation, the bone fusion mass would share the weight bearing load with the implant. This scientific fact is backed not only by ongoing clinical studies of spinal fixation devices other than the Harrington Rod and the Dwyer Wire, e.g., by studies of pedicle screw spinal fixation devices, but also by literature reporting device breakage, with and without spinal sequelae, due to fatigue.

Thus, FDA believes it is incorrect to conclude that spinal interlaminal and intervertebral body fixation devices do not fall within the definition of permanently implantable devices because they do not continue to assist, restore, or replace the function of an organ system or structure of the body after implantation of the devices and completion of healing by bone growth, spinal fusion, or other process with the devices in situ.

FDA thus advises that spinal interlaminal and intervertebral fixation devices are "permanent implants." FDA believes, however, that the failure of these devices can be detected and a medical remedy sought in a timely manner so as to minimize the risk of serious adverse health consequences. Therefore, FDA does not believe at this time that these devices meet the criteria for mandatory tracking. FDA emphasizes that this position, as set out in the preamble to the May 29, 1992, revised proposal, applies only to the two devices identified in that preamble, i.e., the Harrington Rod (21 CFR 888.3050) and the Dwyer Wire (21 CFR 888.3060), and does not reflect its position on any other devices that may be promoted and used for spinal and/or pedicle fixation. There are no other devices that have yet been approved for spinal and/or pedicle fixation or otherwise cleared for marketing as spinal and/or pedicle fixation devices.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

FDA has examined the economic impact of the final tracking regulation taking into account the revisions to the illustrative list of devices subject to tracking and assessed the extent to which the final rule would have an effect upon small business entities in accordance with the economic requirements of Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). FDA has placed on file at the Dockets Management Branch a copy of the agency's "Threshold Assessment of the Impact of Requirements for Medical Device Tracking (Second Version)." The economic impact of this rule is discussed in a final rule published elsewhere in this issue of the **Federal Register** in which the agency is announcing notification of the change of status of the device tracking regulation and is suspending the effective date of the regulations until August 29, 1993.

The agency concludes that the rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

V. Paperwork Reduction Act of 1980

This final rule does not add any information collection requirements to 21 CFR part 821 although, pursuant to law, it does add to the list of devices subject to tracking requirements.

VI. Opportunity for Comments

Under 21 CFR 10.40(e), an opportunity for comment on this final rule is being provided. Interested persons may, on or before September 15, 1993, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 821

Device tracking, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 821 is amended as follows:

PART 821—MEDICAL DEVICE TRACKING REQUIREMENTS

1. The authority citation for 21 CFR part 821 is revised to read as follows:

Authority: Secs. 301, 501, 502, 510, 515, 518, 519, 701, and 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, and 374).

2. Section 821.20 is amended as follows:

a. In the table in paragraph (b)(1) the following entries are added immediately following the entry "870.3460 Vascular graft prosthesis of 6 millimeters and greater diameter" to read as follows:

§ 821.20 Devices subject to tracking.

* * * * *

(b) * * *

(1) Permanently implantable devices.

21 CFR	Classification
* * * * *	
(no cite)	Total temporomandibular joint prosthesis.
(no cite)	Glenoid fossa prosthesis.
(no cite)	Mandibular condyle prosthesis.
(no cite)	Interarticular disc prosthesis (interpositional implant).
* * * * *	

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b. In the table in paragraph (c) the following entry is added to appear at the beginning of the table, and by removing from the last entry in the table for 21 CFR 878.5725, the phrase "(Electromechanical only)" to read as follows:

(c) * * *

21 CFR	Classification
876.3350	Penile inflatable implant.
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Dated: July 8, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19470 Filed 8–11–93; 11:24 am]

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Monday
August 16, 1993

Part V

Department of Housing and Urban Development

Office of Assistant Secretary

Notice of Funding Availability and the Program Guidelines for the Moving to Opportunity for Fair Housing Demonstration for Fiscal Year 1993

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3638; FR–3303–N–02]

Notice of Funding Availability (NOFA) and the Program Guidelines for the Moving to Opportunity for Fair Housing Demonstration for Fiscal Year 1993

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1993; and notice of Program Guidelines for the moving to opportunity for Fair Housing (MTO) Demonstration Program.

SUMMARY: This notice announces a national competition for the Moving to Opportunity for Fair Housing (MTO) Demonstration Program to be administered by public housing agencies (PHAs) in conjunction with non-profit organizations (NPOs) in five metropolitan areas and the City of Los Angeles. HUD has set aside section 8 funding of approximately $50 million in budget authority for rental vouchers and $20 million in budget authority for rental certificates which will support assistance for an estimated 1,350 rental vouchers (Fiscal Year 1993 Funding) and 550 rental certificates (Fiscal Year 1992 Funding) under the MTO Program. The eligible PHAs must serve a central city with a population that is greater than 400,000 within a metropolitan area with a population that is greater than 1.5 million. In addition, up to $500,000 in housing counseling grant funds will be made available by HUD to provide selected families with housing search assistance in this demonstration. The MTO demonstration provides housing counseling services in combination with tenant-based rental assistance to assist very low-income families with children, who reside in public housing or housing receiving project-based Section 8 assistance located in high-poverty census tracts in the jurisdictions of central city PHAs to move to low-poverty census tracts.

This NOFA invites the City of Los Angeles PHA and other eligible PHAs' which serve a central city and NPOs to submit joint applications for the MTO demonstration program. This NOFA provides instructions to applicants governing the submission of applications, and describes procedures for rating, ranking, and approving applications.

Section 152 of the Housing and Community Development Act of 1992 requires that the Department extend eligibility to Los Angeles for FY 1993 funding. The City of Los Angeles will be funded if the PHA submits an approvable application. The five PHAs with the highest scores (not including Los Angeles) will each receive approximately twenty percent of the special allocation of rental certificates. The same PHAs and the Los Angeles PHA will each receive approximately 17 percent of the rental voucher allocation. If a PHA submits an application for a smaller number of units or fewer than five PHAs plus the Los Angeles PHA submit approvable applications, any residual funding will be awarded proportionately to each PHA selected for participation in the MTO Demonstration. Each selected NPO will receive housing counseling grant funds from HUD.

PHA applications must provide census data for the specific high-poverty census tracts in the central city which it serves and in which it proposes to implement the MTO demonstration program, and identify the public housing projects and section 8 moderate rehabilitation projects and projects receiving section 8 project-based assistance in those tracts. Only families living in public housing projects or projects receiving section 8 project-based assistance within the census tract(s) designated by the PHA will be eligible for assistance under the demonstration.

Section 23 of the U.S. Housing Act of 1937 was amended by section 106 of the Housing and Community Development Act of 1992 and now requires that any PHA receiving additional rental vouchers or certificates in FY 1993 must establish a family self-sufficiency (FSS) program. For IHAs, section 106(j) made participation in the FSS program optional for FY 1993 and all future fiscal years. The program guidelines for the FSS program were published in the **Federal Register** on September 30, 1991 (56 FR 49592). The regulations for the FSS program were published on May 27, 1993 (58 FR 30853). Unless specifically excepted by HUD, any rental voucher or rental certificate funding reserved in FY 93 will be used to establish the minimum size of a PHA's FSS program.

If a PHA received an incentive award for the FSS program in response to the NOFA published in the **Federal Register** on September 30, 1991 (56 FR 49612) and amended on January 3, 1992 (57 FR 312), the number of new units received in FY 93 will be added to the incentive awards received in FY 92 and this number will be the minimum size of the PHA's FSS program.

DATES: Applications must be received in room 4220, HUD Building, 451 Seventh Street, SW., Washington, DC 20410, by 3 p.m., EDT on October 15, 1993. A copy of the joint application must also be submitted to the appropriate HUD Field Office. Application forms (HUD–52515) may be obtained from the local HUD Field Office.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0477. Hearing-impaired or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB Control Number 2577–0170.

I. Purpose and Substantive Description

(A) Authority

The MTO Demonstration program is authorized under title I, subtitle C, section 152 of the Housing and Community Development Act of 1992 and the "Annual Contributions for Assisted Housing" heading of title II of the VA, HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139, approved October 28, 1991). The regulations governing the rental certificate program are published at 24 CFR part 882. The regulations governing the rental voucher program are published at 24 CFR part 887.

(B) Description of the Demonstration Design

(1) General.

The MTO program is a demonstration to combine housing counseling services with tenant-based rental assistance to assist very low-income families with children, who reside in public housing or housing receiving project-based Section 8 assistance located in high-poverty census tracts in the central city served by the PHAs, obtain housing in low-poverty census tracts located inside or outside the central city served by the PHAs.

(2) Program Design

In the past, HUD has authorized similar programs to reduce racial

segregation in assisted housing programs in compliance with court orders. The MTO program differs from those programs because MTO program assistance is linked to concentrations of poverty rather than racial concentrations.

A family chosen to participate in the demonstration will either be assigned to the "experimental group" or to the "comparison group" for evaluation purposes. One-half of the families selected for the MTO program must be assigned to each group using a random assignment process.

A family assigned to the "experimental group" will receive extensive housing counseling services from the non-profit organization (NPO) to assist the family in obtaining housing in low poverty areas. Each family from the experimental group must initially sign a lease for a unit located in a low-poverty area.

A family assigned to the comparison group will receive the assistance regularly offered by the PHA to a rental voucher or a rental certificate holder, but will not receive any additional housing search assistance from the NPO. A family from the comparison group will receive a rental voucher or rental certificate and will have the freedom to select any housing in accordance with normal program requirements.

When a rental voucher and a rental certificate provided by HUD to the PHA under this demonstration becomes available for reissue (i.e., the family initially selected for the program drops out of the program or is unsuccessful in its search for a unit, or the family is terminated from the program), the rental assistance may only be used for another family eligible for assistance under this demonstration until the Department releases the PHA from that obligation.

Except as provided in this NOFA, the PHAs participating in the MTO demonstration program must continue to follow all the other requirements of the rental voucher and rental certificate programs.

Collection and maintenance of data are required for biennial interim reports and a ten-year final evaluation reports to Congress mandated by the Housing and Community Development Act of 1992. Applicants must cooperate by keeping records for this demonstration. The type of records required will be specified by HUD.

The housing counseling services provided by the NPO will be funded in part from HUD housing counseling grants, under a grant agreement between the NPO and HUD, and in part from local sources. HUD will have available up to $500,000 in housing counseling grant funds for participating NPOs to serve the experimental families. HUD will provide $275 per unit for housing counseling services for each rental certificate and rental voucher provided to the PHA. No more than half of the families in the demonstration will receive housing counseling services from the NPO. Counseling funds will be available in the amount of $550 for each experimental rental voucher and certificate. HUD recognizes that this amount may not be sufficient to fund the housing counseling services required under this demonstration. Therefore, the NPO must provide an equal amount of funds available from other sources to fund adequately the housing counseling services.

(3) HUD Contractor

HUD may contract with an independent third-party (Contractor) to perform several tasks related to the implementation of the MTO program as well as the evaluation of the success of the demonstration program. These services may include, but are not limited to:

(i) Designing the procedures for random assignment of the families who participate in the program;

(ii) Completing a processing handbook of MTO procedures;

(iii) Training NPOs to perform MTO services;

(iv) Assisting PHAs in revising their administrative plans and equal opportunity housing plans as necessary to provide for the implementation and evaluation of the demonstration program; and

(v) Conducting a process and short-term outcome evaluation of the program.

(4) Outreach and Selection of Families

The funding announced by this NOFA will be available for very low-income families living in public housing or housing receiving section 8 project-based assistance within the census tract(s) designated by the PHA. Since most of the families that qualify for assistance under this statutory demonstration will not qualify for a Federal preference (i.e., involuntarily displaced, homeless or living in substandard housing, or paying more than 50 percent of income for rent) and in order to meet the objectives of the demonstration, selection of families that do not meet a Federal preference does not count against the PHA's 10 percent allowance for admission of non-Federal preference holders. Eligible families will be selected for participation in the MTO demonstration program from a special section 8 waiting list established by the PHA only for this demonstration program. All families selected to receive a rental certificate or rental voucher must select a unit which is eligible housing under the rental voucher and rental certificate program rules.

The PHAs selected to participate in this demonstration must conduct special outreach efforts at all public housing and section 8 projects in the designated high-poverty census tracts. The PHA outreach effort must explain the eligibility requirements for the MTO program, the number of MTO rental vouchers and certificates available, and the application and selection procedures. PHAs and NPOs must comply with the requirements of the PHAs' equal opportunity housing plans and all fair housing laws during the implementation of the demonstration program.

A PHA selected for the MTO demonstration must establish an application deadline for families who want to participate in the MTO Demonstration. Applications received by the deadline will be assigned a position on a separate waiting list based on a random assignment using a lottery. The separate waiting list will be maintained throughout the term of the demonstration to provide a list of eligible families that would receive rental assistance if an MTO rental voucher or rental certificate is available to be re-issued.

(C) Definitions

1. *High and low-poverty Census Tracts.* For purposes of this program, high-poverty census tracts and low-poverty census tracts are defined as follows:

(a) A high-poverty census tract is a census tract located within the boundary of the central city served by the PHA in which at least 40 percent of the persons for whom poverty status is determined had incomes in 1989 below the poverty level.

(b) A low-poverty census tract is any census tract located inside or outside the central city in which less than 10 percent of the persons for whom poverty status is determined had incomes in 1989 below the poverty level.

2. *Families in Assisted Housing.* All very low-income families with children who reside in designated high-poverty census tracts in public housing or in housing projects with one or more units of section 8 project-based assistance and who are willing to move to low-poverty areas are eligible to apply for assistance under MTO.

(D) What PHAs May Apply

A PHA that operates a section 8 rental voucher or rental certificate program in a central city with a population greater than 400,000 within a metropolitan area with a total population greater than 1.5 million may apply for rental voucher and rental certificate funding under the MTO demonstration program.

The PHA must select an NPO that is willing to participate in the MTO demonstration program with the PHA. The NPO must have authority under its charter to operate throughout the metropolitan area including the central city. An NPO which is an agent or instrumentality of a participating PHA, i.e., a subsidiary or other entity created or substantially controlled by the PHA, is not eligible to participate in the MTO demonstration.

The cities that meet the population criteria, as determined by HUD, are:

Baltimore, Maryland
Boston, Massachusetts
Chicago, Illinois
Cleveland, Ohio
Dallas, Texas
Denver, Colorado
Detroit, Michigan
Fort Worth, Texas
Houston, Texas
Kansas City, Missouri
Long Beach, California
Los Angeles, California
Milwaukee, Wisconsin
New York, New York
Philadelphia, Pennsylvania
Phoenix, Arizona
San Diego, California
San Francisco, California
San Jose, California
Seattle, Washington
Washington, D.C.

The fact that a city is on the list above does not mean that the MTO program is an appropriate program for the city. The MTO program is intended to improve the ability of very low-income families with children to leave areas of concentrated poverty. Applications for cities where concentrated poverty is a major problem are more likely to be funded than applications for cities where the concentration of poverty is a relatively minor problem.

(E) Roles of Applicants in Demonstration Implementation

(1) Role of Public Housing Agencies

The PHA will select very low-income families with children from its separate waiting list established for this program in accordance with regulations for the rental voucher and rental certificate programs. The families must reside in section 8 or public housing projects located in the census tracts identified in the PHA's application and must be willing to move to low-poverty census tracts. A family selected for the PHA's MTO program must be issued a rental voucher or a rental certificate, and briefed on the benefits of the MTO program for families. All families will receive the housing counseling usually provided by the PHA to a family selected under the rental voucher and rental certificate programs. Families randomly assigned to the experimental group will receive additional housing search assistance provided by NPOs and these families will be informed that they must initially use their section 8 assistance in a low-poverty census tract. In some cases, families who are eligible to participate in the MTO demonstration program may be on both the regular section 8 waiting list and the special MTO waiting list. If such families decline to participate in the MTO demonstration, the families will retain their position on the regular section 8 waiting list and may receive rental assistance in accordance with normal program procedures. The PHAs must submit reports to HUD biennially on the progress of the MTO demonstration. The reports must include the number of persons served, their race, gender and ethnicity, the level of housing counseling services received, the cost of providing the housing counseling services, updates on the employment of families, and other information as determined by HUD.

(2) Role of Non-Profit Organization

The NPO must randomly assign families selected by the PHA for participation in the demonstration to the experimental group or the comparison group. HUD will provide guidance on random assignment procedures.

The NPO must provide individual counseling on housing search in low-poverty census tracts to the families selected for the experimental group with sensitivity to the special needs of the individual families. The NPO must also give guidance to the families on the requirements of unit owners and conduct role-playing sessions in which families learn effective ways to present themselves to the unit owners. The NPO must aggressively recruit unit owners willing to provide housing in low-poverty census tracts throughout the metropolitan area. The NPO must perform credit and housekeeping checks for the families in the experimental group. The NPO must assist the experimental group families in their search for housing. For example, the NPO staff must provide transportation to low-poverty census tracts for a tour and a search for available units and must assist the families in the preliminary inspection of potential units. The NPO must provide information and counseling to the families as they adjust to their new environment. A description of services required to be provided by NPOs is included as Attachment 1 to this NOFA. The NPOs must periodically report directly to HUD with copies of the information to the PHAs.

II. Application Process

(A) Application Submission Deadline

The PHA and NPO must submit an application for funding under this NOFA to the following address: U.S. Department of Housing and Urban Development, Mr. Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, room 4220, 451 Seventh Street, SW., Washington, DC 20410 by 3 p.m., E.D.T., on October 15, 1993. HUD Headquarters is the official place of receipt for all applications. Application forms (HUD–52515) may be obtained from the appropriate HUD Field Office. A copy of the application submitted to Washington must also be submitted to the appropriate HUD Field Office.

The application deadline for receipt of the application in HUD Headquarters is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will not accept any application that is not received in HUD Headquarters on or before the application deadline. Applicants should take this requirement into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD Headquarters and the Field Offices will not accept applications which are sent via facsimile (FAX) transmission.

For purposes of expediting the application process, the PHA should encourage the chief executive officer of the unit of general local government to submit a letter with the PHA application commenting on the PHA application in accordance with section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the unit of local government.

(B) Selection Criteria/Ranking Factors

(1) General

HUD will screen all applications and disapprove any that are in the categories listed in section II(C) of this NOFA. HUD will use the selection criteria and point assignment listed below to review and rate all approvable applications. The Los Angeles PHA and the five PHA applications that receive the highest scores under the rating process will be approved and the PHAs will receive rental vouchers and rental certificates in connection with the MTO program.

(2) Selection Ranking Factors

(a) *Selection Criterion 1: Site of Demonstration Program (Maximum of 15 points)—(i) Description:* HUD will assign points for the extent of concentration of the poverty population within all high-poverty tracts, based on an identification of all high-poverty census tracts within the central city served by the PHA.

(ii) *Rating: 15 points.* The poverty population residing in all high-poverty census tracts represents 35 percent or more of the poverty population residing in the central city served by the PHA.

10 points. The poverty population residing in all high-poverty census tracts represents at least 25 percent but less than 35 percent of the poverty population residing in the central city served by the PHA.

5 points. The poverty population residing in all high-poverty census tracts represents at least 15 percent but less than 25 percent of the poverty population residing in the central city served by the PHA.

0 points. The poverty population residing in all high-poverty census tracts represents less than 15 percent of the poverty population in the central city served by the PHA.

(b) *Selection Criterion 2: Number of Assisted Families with Children Residing in Census Tracts Selected by PHA (Maximum of 10 points)—(i) Description:* The PHA shall provide an estimate of the total number of families with children residing in eligible projects that are located in central city high-poverty census tracts selected by the PHA for this demonstration.

(ii) *Rating: 10 point.* The number of families with children residing in eligible projects located in high-poverty tracts is more than three times the number needed to support the demonstration, as proposed in the application.

5 points. The number of families with children residing in eligible projects located in high-poverty tracts is at least two times greater than, but less than three times, the number needed to support the demonstration, as proposed in the application.

0 points. The number of families with children residing in eligible projects located in high-poverty tracts is less than two times the number needed to support the demonstration, as proposed in the application.

(c) *Selection Criterion 3: The Feasibility of the Provision of Housing Search Assistance (Maximum of 25 points)—(i) Description:* The capability of the NPO to provide quality housing counseling services is evidenced by sources of the funds necessary to carry-out the services including but not limited to HUD counseling funds.

Rating: 16–25 points. The NPO budget is sufficient to provide for quality housing counseling services as identified in attachment 1. These services will be adequately funded from HUD counseling funds and other resources. Firm financial commitments are supported by letters from the funding source signed by an official authorized to commit the funds.

1–15 points. The NPO budget is sufficient to provide for quality housing search assistance as identified in attachment 1. These services will be adequately funded from HUD counseling funds and other resources. However, some of the other resources are only partially or contingently committed.

0 points. The NPO budget is unrealistic, or commitments of other resources are inadequate.

(d) *Selection Criterion 4: PHA Administrative Capacity (Maximum of 25 points)—(i) Description:* Overall PHA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates, correct administration of housing quality standards (HQS) and compliance with requirements concerning portability of rental vouchers and certificates including compliance with obligations as an initial or receiving PHA, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements is either excellent or good.

(ii) *Rating: 16–25 points.* Field Office rates overall PHA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings; the PHA is complying with portability requirements under the rental voucher and certificate programs; not more than 15 percent of the units inspected by the Field Office during the last management review failed to meet housing quality standards (HQS) or the field office is aware of actions taken by the PHA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates under Annual Contributions Contract (ACC) for one year or more was at least 95 percent as of September 30, 1992, unless Field Office documents that the September 30, 1992, report was not reflective of PHA performance;

1–15points. Field Office rates overall PHA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; the Field Office is aware of some problems with PHA administration of portability (e.g., not responding to billing promptly); not more than 25 percent of the units inspected by the Field Office during the last management review failed to meet HQS or the field office is aware of actions taken by the PHA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates under ACC for one year or more was at least 85 percent as of September 30, 1992, unless Field Office documents that the September 30, 1992, report was not reflective of PHA performance;

0 points. If neither of the above statements apply, assign 0 points.

(e) Selection Criterion 5: NPO Record and Capacity (25 points)—(i) Description. The history and capacity of the NPO to properly administer the housing counseling services as evidenced by existing efforts as well as key staff experience.

(ii) Rating: 16–25 points. The NPO has a history of assisting very low-income families with children in the search for housing and/or has helped to introduce these families into low-poverty census tracts. The NPO exhibits a good knowledge of the section 8 rental voucher and rental certificate regulations and fair housing and equal opportunity requirements. The key personnel of the NPO have considerable experience in the provision of the services required in the application.

1–15 Points. The NPO has some history of assisting very low-income families with children in finding suitable housing and/or helping to introduce low-income persons into low-poverty census tracts. The NPO is familiar with the section 8 regulations, or the key personnel of the NPO have

limited background in the provision of the necessary housing counseling services and limited knowledge of fair housing and equal opportunity requirements.

0 Points. The NPO has no experience with housing search assistance or with the section 8 regulations.

(c) Unacceptable Applications

Applications that fall into any of the following categories will not be processed:

1. (a) The Department of Justice has brought a civil rights suit against the applicant PHA or NPO, and the suit is pending;

(b) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance;

(c) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance.

(d) HUD has deferred application processing by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD title VI regulations (24 CFR 8.57).

2. The PHA has serious, unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings for one or more of its rental certificate, rental voucher, or moderate rehabilitation programs.

3. The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent.

4. The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer an additional increment of rental vouchers or rental certificates.

5. The PHA does not administer a rental voucher, certificate or moderate rehabilitation program.

6. The PHA is not in compliance with the Single Audit Act (31 U.S.C. 7501–7507), OMB Circular No. A–128, and HUD's regulations at 24 CFR part 44, or OMB Circular A–133, as applicable.

B. An application that is processed for rating and ranking will not be considered for funding if the application has failed to receive a combined score of at least 32 points under this NOFA for Selection Criteria 3: PHA Administrative Capacity and Selection Criteria 4: NPO Record and Capacity.

(D) Application Selection and Funding Procedures

HUD Headquarters will select the Los Angeles PHA and the five other PHAs with the five highest rated applications. The five PHAs with the highest scores will each receive approximately twenty percent of the special allocation of rental certificates. The same PHAs and the Los Angeles PHA will each receive approximately 17 percent of the allocation for rental vouchers. If a PHA submits an application for a smaller number of units or fewer than five PHAs plus Los Angeles submit approvable applications, any residual funding will be awarded proportionately to each PHA selected for participation in the MTO Demonstration. Each selected NPO will receive housing counseling grant funds from HUD based on the number of MTO rental voucher and rental certificate units approved for the PHA.

III. Checklist of Application Submission Requirements

(1) General

The applications must include the information requested in this section. Applications for less than 50 rental vouchers and rental certificates will not be accepted.

The application must include an explanation of how the application meets, or will meet, the application selection criteria.

(2) Required Application Contents

(a) PHA Application Forms

Each PHA must submit Form HUD–52515, Application for Existing Housing, in accordance with the program regulations.

(b) General

The application must be assembled in the order shown in its table of contents. After the entire application is assembled, please:

(i) Insert a cover sheet to separate each part;

(ii) Mark each exhibit with an appropriately numbered tab;

(iii) Number every page of the application sequentially; and

(iv) Enter the appropriate page number of each exhibit on the table of contents page. Be sure to provide each applicable exhibit (and all its parts) included in the table of contents. Number exhibits in the order given in the table of contents. If an exhibit is not applicable, enter "NA" in the page column of the table of contents.

(c) Narrative Regarding Program Implementation

The PHA and NPO must submit an explanation of how the PHA and NPO propose to implement the MTO demonstration. The PHA and NPO must submit a narrative description which demonstrates that, for the number of units awarded under the MTO demonstration program, the PHA and NPO will be able to assist participating families to execute leases with landlords within 12 months after the approval of the application.

(d) Description of High-Poverty Census Tracts and Eligible Units

The PHA and the NPO must submit a listing and description of all the high-poverty census tracts in the central city served by the PHA where the MTO demonstration program will be implemented. Data from the 1990 Census must be used to identify the target census tracts. A map which shows the target high-poverty census tracts must accompany the application. The percentage of persons living in poverty in 1990 in each census tract can be obtained from the Census Bureau publication "1990 Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas", Washington, DC, Series CPH–3. Applicants are cautioned that the Census may not have published the data for a particular city by the time this notice is published. Many city and state planning agencies have the applicable data and accompanying census tract maps. The poverty percentages for census tracts may also be obtained from the Public Housing Division staff in the appropriate Field Office at the time the applicant obtains the application forms. The HUD Field Office does not have the capacity to identify census tract boundaries or provide required maps.

The application must also identify the public housing and the Section 8 moderate rehabilitation projects located within the designated high-poverty census tracts. The HUD Field Office will provide, upon request from the PHA, the names of projects receiving project-based Section 8 assistance in the designated high-poverty census tracts identified by the PHA. Applicants may contact the Public Housing Division Staff in the appropriate Field Office to obtain the identity of all projects receiving project-based section 8

assistance in the designated high-poverty census tracts.

(e) Description of Low-Poverty Census Tracts

The PHA and the NPO must submit a listing and description of low-poverty census tracts in the metropolitan area including data which demonstrates the availability of housing opportunities and rents at or below the current section 8 Fair Market Rents (or exception rents) in low-poverty census tracts for families who participate in the MTO demonstration. A map which shows the low-poverty target census tracts must accompany the application. The percentage of persons living in poverty in 1990 in each census tract can be obtained from the Census Bureau publication "1990 Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas", Washington, DC, Series CPH–3. Applicants are cautioned that the Census may not have published the data for a particular city by the time this notice is published. Many city and state planning agencies have the applicable data and accompanying census tract maps. The poverty percentages for census tracts may also be obtained from the Public Housing Division staff in the appropriate Field Office at the time the applicant obtains the application forms. The HUD Field Office does not have the capacity to identify census tract boundaries or provide required maps.

(f) Description of Housing Counseling Services

The NPO must submit a description of the housing counseling services to be provided by the NPO to the families with children who will participate in the MTO program. The NPO must provide a separate budget listing the sources of income and the cost of the housing counseling services for the first year. The budget detail should include a breakdown of expenses including proposed staffing levels, transportation, advertising, administration, training and all other costs associated with providing the housing counseling services to families and implementing the MTO demonstration program. The NPO must include copies of documents, if any, which show firm financial commitments from other sources to support the housing counseling services identified by the NPO for the first year of the MTO demonstration.

(g) Description of NPO Experience

The NPO must submit a narrative description of the NPO's history in assisting very low-income families with children in the search for housing. The NPO should demonstrate that its personnel have a good knowledge of the Section 8 rental voucher and rental certificate programs and fair housing and equal opportunity requirements. The NPO should provide resumes, references, or other available documents which show that the key personnel in the NPO have experience in the provision of the housing counseling assistance services.

(h) NPO Charter Documents

The NPO must have an organizational charter which authorizes the NPO to conduct metropolitan-wide activities. A copy of the NPO's organizational documents must accompany the application.

(i) Agreement to Cooperate With HUD Evaluation of MTO Demonstration

As a part of the application for funding, each PHA and NPO applicant must submit a letter in which each applicant agrees to participate and cooperate in any evaluation efforts undertaken by HUD to determine the effectiveness of the MTO demonstration.

(j) Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees (PHAs and NPOs) of Federal agencies to certify that they will provide a drug-free workplace. Thus, each PHA and NPO must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. (See attached Certification for Drug-Free Workplace, attachment 2.)

(k) Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) generally prohibits recipients of Federal contracts, grants, and loans from the use of appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR part 87.110, any PHA and NPO which submits an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist PHAs and NPOs, the text for the certification regarding lobbying (attachment 3 and Standard Form LLL, "Disclosure Form to Report Lobbying" (attachment 4) is attached.

(l) Certification Regarding Compliance With Single Audit Act

The PHA must be in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A–133, in order to be eligible for funding. The certification must include the period covered by the last audit conducted and submitted to HUD in accordance with these requirements, or the period covered by the audit currently under contract. Applicants who are not currently in compliance with the audit requirements are not eligible for funding. To complete the application, a PHA must submit a certification of its compliance with the Single Audit Act (attachment 5).

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the appropriate Field Office no later than the date and time specified in section II of this NOFA. The Field Office will initially screen all applications and notify PHAs of technical deficiencies by letter.

If an application has technical deficiencies, the PHA will have 14 calendar days from the date of the issuance of written notification to submit the missing or corrected information to the Field Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All PHAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate Field Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All PHAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. A PHA application that does not comply with the requirements of 24 CFR § 882.204(a) or 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/disclosure requirements, after the expiration of the 14-day cure period, will be rejected from processing.

V. Other Matters

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(B) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effect on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA would not substantially alter the established roles of HUD, the States and local governments, including PHAs.

(C) Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies contained in these guidelines may have a significant impact on the maintenance and general well-being of some families. The MTO demonstration can be expected to provide additional decent and sanitary housing for very low-income families with children who seek to move to low-poverty census tracts. Further, the housing counseling services provided by the non-profit organizations are expected to increase the families' ability to secure rental housing in low-poverty census tracts. Since the impact on the family is considered beneficial, no further review is necessary.

(D) Accountability in the Provision of HUD Assistance

On March 14, 1991 (56 FR 11032), HUD published a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR §§ 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosures reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(E) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

(F) Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions concerning the rule should be directed to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh street, SW., Washington DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(G) Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103,

HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Dated: July 14, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Attachment 1—Moving to Opportunity for Fair Housing Demonstration Program Description of Housing Counseling Services

1. A Non-Profit Organization (NPO) which is selected as a participant under this NOFA must aggressively recruit owners and managers of property in low-poverty census tracts throughout the metropolitan area who are interested in renting to Section 8-assisted tenants. In recruiting owners and managers of property in low-poverty census tracts, the NPO is reminded of the provisions of the Equal Opportunity Housing Plan which includes actions (1) to further affirmatively national fair housing policies pursuant to the Fair Housing Act by promoting a wider choice of housing opportunities for minorities and female-headed households and (2) to achieve participation by owners of units of suitable price and quality located outside census tracts of high-poverty or minority concentrations. The NPO shall conduct the recruitment in person, by telephone, in writing, at meetings of landlord associations, by special brochures, and by other economically feasible means. The NPO shall make special efforts to obtain the participation of owners and managers of more than 500 units and of owners and managers of units with 3 or more bedrooms. In recruiting such owners and managers, the NPO shall evaluate whether the units will meet the housing quality standards. Recruitment of landlords shall be an ongoing process used to identify housing units that assisted families might wish to rent and NPOs shall devote staff resources to landlord recruitment throughout the course of the demonstration.

2. The PHA shall provide the NPO with a list of the names of families that have been selected to participate in this demonstration. The NPO shall assign each family on the list to the experimental group or the control group status by some random method (such as whether the last digit of the social security number of the head of household is even or odd) only until one-half the families are either experimental or controls. The families selected to be in the control group will be given a rental voucher or certificate by the PHA and these families can search for a unit to lease. The families selected for the experimental group will receive housing counseling assistance, but can only receive assistance if they initially lease a unit in a low-poverty census tract.

3. The families selected for participation in the experimental group will receive guidance from the NPO in selecting a suitable unit. The PHA and NPO shall inform the family of its responsibilities and the responsibilities of the owner. This guidance in addition to the housing counseling services shall include:

(a) Family and owner responsibilities under the lease and assistance contract;

(b) Applicable housing quality standards and procedures for compliance with those standards;

(c) Significant aspects of applicable State and local landlord-tenant laws;

(d) Significant aspects of Federal, State, and local fair housing laws:

(e) Applicable fair market rents or payment standards, determination of total tenant payment and establishment of housing assistance payments.

4. If a family is selected for the experimental group, the NPO may require the family to submit a letter from the current landlord about the family's tenancy history, and a general letter of reference.

5. At a group briefing for MTO families selected for the experimental group, NPOs shall give the families guidance about what landlords are looking for in a tenant, and shall conduct role-playing sessions in which families learn about effective ways to present themselves to landlords. NPOs must present brief, realistic introductions about the advantages and disadvantages of living in low-poverty census tracts in the metropolitan area. NPOs shall give families maps showing low-poverty neighborhoods of the metropolitan area. To the extent practicable, such neighborhoods shall be both inside and outside census tracts of minority concentration.

NPOs shall also describe in detail effective housing search strategies, and warn against ineffective search strategies. These may be to some extent different by site. For example, the Gautreaux program in Chicago advises families to look for rental housing ads in neighborhood newspapers, and notices on bulletin boards in village halls. It advises against telephone shopping, because landlords may then screen on accent or grammar, and against starting off an interview with a prospective landlord by asking, "Do you accept Section 8?"

The importance of the housing search strategies must be emphasized. It is hoped that individual housing search by assisted families, rather than the organized landlord recruitment effort, will be the main source of placements.

6. The PHA must assure that each family selected for MTO receives a rental voucher or rental certificate holder's packet. The packet must contain:

(a) Request for Lease Approval;

(b) Required Lease Provisions and Prohibited Lease Provisions;

(c) Information on Lead-Based Paint hazards;

(d) Forms for inspection of housing units;

(e) Fair Housing: It's your Right (HUD–1260–FHEO) dated July 1990, or the Spanish translation thereof (HUD–1260–1–FHEO SPAN) dated September 1991, as appropriate;

(f) Information about total tenant payment or the family's portion of the rent to owner and the fair market rent or payment standard appropriate for the family size and composition;

(g) The schedule of allowances for utilities and other services;

(h) Such other items as HUD may subsequently determine are needed.

7. NPOs must perform credit checks on MTO families selected for the experimental group. Owners of rental property in low-poverty census tracts will generally do credit checks in any case. The purpose of the MTO credit check is to avoid the landlord having to do the check, thereby saving the assisted family time and often money. If the credit history is unfavorable, NPOs may suggest ways to cure the credit problem. When the landlord recruitment effort described above leads to the identification of potential low-poverty census tract units, the NPO is not obligated to show them to a family, including a family with a credit history that is not acceptable to most property owners, although the experimental group family always has the right to seek a unit of its choice in low-poverty census tracts.

8. NPOs shall visit applicant families in their homes, to do the following:

(a) Observe the family's treatment of the rental property it currently occupies; and

(b) Provide individual counseling on relocation to low-poverty census tracts, sensitive to the special needs of the individual family.

The reason for the housekeeping check is that a small minority of assisted family heads have grown up in dysfunctional families in which they never learned housekeeping skills. When they lease a unit in a low-poverty census tract, this frequently leads to early termination of the lease by the landlord because of lease violations. If the family's treatment of its current unit would not be acceptable to most private landlords in low-poverty census tracts, the NPO shall inform the family of the areas of deficiency and offer to schedule a return visit in which improvement could be demonstrated. It shall also inform the family that without improvement, its chances of successfully leasing a unit in a low-poverty census tract are not good. When the landlord recruitment effort described above leads to the identification of potential low-poverty census tract units, the NPO is not obligated to show them to families with housekeeping standards that are not acceptable to most property owners, although the family always has the right to seek a unit of its choice in low-poverty census tracts.

For the individual counseling component of the home visit, the NPO staff shall be well informed about (a) public transportation routes, (b) public school systems, (c) hospital and public health clinic locations, (d) new industrial and major retail facilities, or other potential employment centers. If the assisted family receives a rental voucher, the NPO shall point out to the family the amount of rent and utilities it will be able to afford from month to month, and shall offer to help the family draw up a monthly budget for the purpose of estimating the maximum feasible rent to owner for that family.

9. Depending on the success of the landlord recruitment effort, the NPO shall be obliged to show no more than three units in low-poverty census tracts to the assisted family that are appropriate for the needs and objectives described by the family during the home visit, subject to the exceptions for credit history and housekeeping noted previously. The NPO shall drive the family head to the unit in question, pointing out community features and facilities as relevant, and introducing the family head to the landlord.

HUD does not expect that the landlord recruitment effort will always be successful at identifying three appropriate units for each family. In particular, larger families requiring more bedrooms than average may often find appropriate units only in single-family homes and duplexes; the recruitment of the owners of these units is sometimes not economically feasible for the NPO. NPOs may also not be able to locate appropriate units for families with other special needs or objectives.

10. The NPO shall share such favorable information as it has accumulated about the assisted family with property owners identified either by the family or by the landlord recruitment effort, including but not limited to favorable letters of reference, credit history, and the result of the home visit, with the object of speeding up the landlord's screening decision. NPOs shall also help to negotiate rents within the fair market rent/payment standard and rent reasonableness limits. The NPO shall warn a landlord that an outstanding housing quality standards violation will prevent the PHA's approval of the unit until the violations are corrected.

11. The NPO shall contact each assisted experimental group family in a low-poverty census tract within 90 days of the beginning of the lease term. The NPO shall offer such additional counseling and/or referral as will aid in assuring a satisfactory adjustment to the new environment. Families shall be assured of the availability of a supportive services counselor to help them if problems relating to their placement arise. Two frequent problems are: (1) Delays in transferring paperwork from one public assistance office to another, which may lead to income support checks not coming on time; (2) unexpectedly high utility hookup deposits. NPOs shall ensure that their staff are familiar with prevailing local solutions to these and other common move-in problems.

From time to time the NPO shall sponsor meetings of assisted families who live in the same area, to discuss common problems (e.g., child care, transportation) and facilitate their solution.

12. The NPO shall also contact, by mail, the owner or manager of the unit in which an assisted family is placed and assure the owner or manager of the availability of a supportive services counselor to help with problems that may arise in the family's adjustment to the new environment. Counseling and/or referral to appropriate public or private agencies involved with employment, education, health, and social services shall be provided by the NPO to assisted families or owners or managers who request assistance, in consultation with the appropriate PHA.

13. The NPO shall contact assisted families by mail approximately 120 days before each of the first two annual reexamination's and HQS inspections for their units to offer assistance.

14. Inspection of the unit for compliance with the housing quality standards of section 8, and execution of assistance contracts with owners, will be the responsibility of the PHA.

15. The NPO shall report every complaint of discrimination on the grounds of race, color, religion, national origin, sex, handicap, age or familial status arising from this demonstration to the appropriate HUD Regional/Field Office or to a state or local agency, as appropriate.

Attachment 2—Certification Regarding Drug-Free Workplace Requirements (From 24 CFR 24, Appendix C)

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies. Certification Regarding Drug-Free Workplace Requirements Alternate I.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employees will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Signed by: (Name, Title & Signature of Authorized PHA Official)

(Name & Title)

(Signature & Date)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Signed by: (Name, Title & Signature of Authorized PHA Official)

(Name & Title)

(Signature & Date)

Attachment 3—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized PHA Official)

(Name & Title)

(Signature & Date)

BILLING CODE 4210-33-M

Attachment 4

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for Instructions and public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee Tier _____, if known:

Congressional District, if known:

5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:

Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:
$

10a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):
$_____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment (check all that apply):
☐ a. retainer
☐ b. one--time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify:

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ **Yes** ☐ **No**

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form-LLL

BILING CODE 4210-33-C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. 1352. The filing of a form if required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SL–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for addition information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardeed, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipients, include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for BID (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF–LLL–A Continuation sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for the collection of information is estimated to average 30 minutes per response, including 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 this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Disclosure of Lobbying Activities.—Continuation Sheet

Reporting Entity: _____

Page _____ of _____

Attachment 5.—Certification Regarding Single Audit Act

The undersigned certifies that, to the best of his or her knowledge, the housing agency is currently in compliance with the audit requirements under the Single Audit Act (31 U.S.C. 7501–7507), OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A–133, as applicable. This certification includes the period [insert dates audit covers] which covers the last audit conducted and submitted to HUD in accordance with these requirements, or the period for audit currently under contract.

Signed by: (Name, Title & Signature of Authorized PHA Official)

_____

(Name & Title)

_____

(Signature & Date)

Attachment 6.—Checklist for Technical Requirements

The following checklist specifies the required information which must be submitted in the joint application. It is recommended, but not required, that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST

PHA		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	1. The application contains a cover letter stating the total number of rental vouchers or rental certificates requested in the application and indicates whether or not the applicants are willing to accept a reduced number.
☐	☐	☐	☐	2. The application includes form HUD 52515 (including the number of two and three bedroom rental certificates) and the monthly adjusted income (see section H of HUD 52515) by bedroom size for which the PHA has submitted an application.
☐	☐	☐	☐	3. The application contains a written narrative explanation of the proposed implementation of the MTO demonstration and includes a leasing schedule, which provides for the lease-up of 100 percent of the units within 12 months of application approval.
☐	☐	☐	☐	4. The application contains a description of the Census data which shows the high-poverty census tracts where the families with children reside and specifies the assisted housing units which qualify them for assistance under the demonstration.
☐	☐	☐	☐	5. The application contains a description of the housing stock for the low-poverty census tracts in the metropolitan area.
☐	☐	☐	☐	6. The application contains a description of the housing search assistance to be provided by the NPO; a budget of sources of income and the cost of the services; and copies of letters from other sources which will provide firm commitments of financial support for the services.
☐	☐	☐	☐	7. The application contains a description of the experience of the NPO in assisting in the housing search of very low-income families. The NPO addresses its knowledge of the section 8 rental voucher and rental certificate programs.
☐	☐	☐	☐	8. The application contains separate letters from the PHA and the NPO which commits each organization to cooperate with each other in the implementation of the MTO demonstration, and with HUD in the evaluation of the demonstration.

REQUIREMENT FOR DRUG-FREE WORKPLACE CERTIFICATION, ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENT, AND SINGLE AUDIT ACT

PHA		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application meets HUD's drug-free workplace requirement set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace (attachment 2).)
☐	☐	☐	☐	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the PHA or NPO obtaining more than $100,000 in budget authority. To comply, PHAs and NPOs must submit an Anti-Lobbying Certification (attachment 3) and if warranted, a Disclosure of Lobbying Activities (attachment 4).
☐	☐	☐	☐	The application meets the requirement that the applicant is in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's regulations at 24 CFR part 44; or OMB Circular No. A–133. The PHA must submit a Single Audit Act Certification (attachment 5). PHAs who are not currently in compliance with the audit requirements will not be eligible for funding.

[FR Doc. 93–19599 Filed 8–13–93; 8:45 am]
BILLING CODE 4210–33–M

federal register

Monday
August 16, 1993

Part VI

Department of Education

34 CFR Part 81
General Education Provisions Act; Enforcement; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 81

RIN 1880–AA35

General Education Provisions Act; Enforcement

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends general procedural rules for proceedings before the Office of Administrative Law Judges (OALJ). The regulations implement amendments to Part E of the General Education Provisions Act (GEPA) made by Public Law 100–297, enacted April 28, 1988. These regulations are needed to clarify and refine the existing general procedural regulations and enhance the operating efficiency of the OALJ.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Frank J. Furey, Director, Office of Hearings and Appeals, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–3644. Telephone (202) 732–1828. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 6, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (57 FR 506) that included a discussion of the proposed revisions. As a result of public comment, several changes in the provision to govern the process for interlocutory appeal to the Secretary from an administrative law judge's interim ruling were adopted. The changes include clarifying (1) the circumstances where interlocutory review is available and (2) that the Secretary will request documentation beyond what is filed with the petition for review after the petition is accepted and only if necessary. On November 30, 1992, the Secretary published final regulations for this part in the **Federal Register** (57 FR 56794) providing that certain filings in Department administrative proceedings may be submitted by facsimile. The Secretary amends §§ 81.20 and 81.42 to permit the submissions of certain filings by facsimile.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, two parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 81.20 Interlocutory Appeals to the Secretary From Rulings of an ALJ

Comments: Two comments were received on this issue. One supported the proposed amendment of 34 CFR part 81 to add § 81.20 to provide for interlocutory appeals to the Secretary of Education from certain rulings of an administrative law judge. The commenter stated that the provision will reduce the number of remands of cases to the administrative law judges and may encourage the resolution of cases through settlement.

Another comment was received suggesting three modifications. First, the commenter stated that these appeals should also be authorized if subsequent review of an administrative law judge's decision will be an inadequate remedy. The commenter stated that a party may be seriously affected by an administrative law judge's ruling, but no adequate remedy will be available at the end of the proceeding because the issue will be rendered moot.

Second, the commenter suggested that the NPRM be revised to require an administrative law judge to certify a request for interlocutory appeal before it may go to the Secretary. Third, the commenter suggested that the Secretary should decide an interlocutory appeal on the basis of the record before an administrative law judge. Hence, the Secretary would have before him the arguments presented on the issues proffered on appeal, and further written submission would not ordinarily be required after the filing of the petition for review and response.

Discussion: It is the intention of the Secretary that interlocutory review be available if no adequate remedy will be available at the end of the proceeding or the immediate resolution of the question will materially advance the proceeding and the issue involves a controlling question of law. An example of this is an administrative law judge's decision to deny a claim of privilege.

Second, the Department did not revise § 81.20 as suggested to require that an administrative law judge certify an interlocutory appeal before it goes to the Secretary. The interlocutory appeal procedure is intended to include both instances where an administrative law judge certifies the issue for review, and those in which an administrative law judge states a view that review by the Secretary is either appropriate or not appropriate.

Third, under the rule, each party submits a petition for review of the interim ruling that must be accompanied by a copy of the finding, ruling, or opinion at issue. Accordingly, the Secretary reviews the administrative record, or relevant portions, to the extent the Secretary deems that review necessary. The existing material in the record may be sufficient to enable the Secretary to reach a decision on the issues. If additional argument or documents are needed, the Secretary will request them after the filing of the petition for review and response.

Changes: Section 81.20(a)(2) is revised to clarify that the interlocutory appeals procedure is available where no adequate remedy is available at the end of the proceeding or the immediate resolution of the question will materially advance the proceeding and the issue involves a controlling question of law. Section 81.20(g) is revised to provide that the Secretary may provide the parties with reasonable time to submit written argument "or other existing material in the administrative record" on the issue subject to review.

Section 81.37 Application for Review of a Disallowance Decision

Comment: One commenter supported the amendment to this provision to require the Department of Education to provide an administrative law judge with a copy of any document identified in a disallowance decision, within ten (10) days after receipt of a copy of an application for review.

Changes: None.

Executive Order 12291

These regulations were reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from

any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 81

Enforcement, General Education Provisions Act.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: May 27, 1993.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 81 as follows:

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

1. The authority citation for part 81 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), 1234–1234i, 3474(a), unless otherwise noted.

2. Section 81.2 is amended by revising the definition of *Secretary* to read as follows:

§ 81.2 Definitions.

* * * * *

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

* * * * *

3. Section 81.14 is amended by revising paragraph (a) to read as follows:

§ 81.14 Settlement negotiations.

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations, or for approval of a settlement agreement, the ALJ may grant a stay of the proceedings upon a finding of good cause.

* * * * *

4. Section 81.18 is amended by revising paragraph (a) to read as follows:

§ 81.18 The record.

(a) The ALJ arranges for any evidentiary hearing or oral argument to be recorded and transcribed and makes the transcript available to the parties. Transcripts are made available to non-Departmental parties at a cost not to exceed the actual cost of duplication.

* * * * *

§§ 81.20–81.35

[Redesignated as §§ 81.30–81.45]

5. Sections 81.20 through 81.35 are redesignated as §§ 81.30 through 81.45, respectively.

6. In the list below, for each redesignated section in the left column, remove the cross-reference in the middle column and add, in its place, the cross-reference listed in the right column:

Section	Remove	Add
81.30(a)	81.21	81.31
81.31(a)	81.22	81.32
81.31(c)	81.24	81.34
81.34(a)	81.20	81.30
81.35(a)	81.21	81.31
81.35(c)	81.26	81.36
81.37(b)	81.24(b)(2)	81.34(b)(2).
81.38(b)	81.24	81.34
81.38(b)(1)(ii)	81.24	81.34
81.38(c)	81.24	81.34
81.38(c)	81.27	81.37
81.38(c)(1)	81.27(d)	81.37(d)
81.38(c)(3)	81.27	81.37
81.39(a)	81.27	81.37
81.40	81.28	81.38
81.40(c)	81.22	81.32
81.40(d)	81.23	81.33
81.45(b)(1)	81.27	81.37
81.45(b)(2)	81.34	81.44
81.45(d)	81.28	81.38
81.45(d)	81.34	81.44

7. A new § 81.20 is added to subpart A to read as follows:

§ 81.20 Interlocutory appeals to the Secretary from rulings of an ALJ.

(a) A ruling by an ALJ may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of an initial decision, grant review of a ruling upon either an ALJ's certification of the ruling to the Secretary for review, or the filing of a petition seeking review of an interim ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be accompanied by a copy of the ruling and any findings and opinions relating to the ruling. The petition must be filed with the Office of Hearings and Appeals, which immediately forwards the petition to the Office of the Secretary.

(c) A copy of the petition must be provided to the ALJ at the time the petition is filed under paragraph (b)(2) of this section, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect that service.

(d) If a party files a petition under this section, the ALJ may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the ALJ's receipt of the petition for interlocutory review. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) (1) A party's response, if any, to a petition or certification for interlocutory review must be filed within seven days after service of the petition or certification, and may not exceed ten pages, double-spaced, in length. A copy of the response must be filed with the ALJ by hand delivery, by regular mail, or by facsimile transmission.

(2) A party shall serve a copy of its response on all parties on the filing date by hand-delivery or regular mail. If agreed upon by the parties, service of a copy of the response may be made upon the other parties by facsimile transmission.

(f) The filing of a request for interlocutory review does not automatically stay the proceedings. Rather, a stay during consideration of a petition for review may be granted by the ALJ if the ALJ has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument or other existing material in the administrative record with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a request for interlocutory review within

15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the ALJ's ruling.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1234(f)(1))

8. Redesignated § 81.37 is amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as (d) and (e), respectively, and adding a new paragraph (c) to read as follows:

§ 81.37 Application for review of a disallowance decision.

(a) If a recipient wishes to obtain review of a disallowance decision, the recipient shall file a written application for review with the Office of Hearings and Appeals, and, as required by § 81.12(b), shall serve a copy on the applicable Departmental official who made the disallowance decision.

(b) A recipient shall file an application for review not later than 30 days after the date it receives the notice of a disallowance decision.

(c) Within 10 days after receipt of a copy of the application for review, the authorized Departmental official who made the disallowance decision shall provide the ALJ with a copy of any document identified in the notice pursuant to § 81.34(b)(2).

* * * * *

9. Redesignated § 81.41 is amended by revising paragraph (c) to read as follows:

§ 81.41 Initial decision.

* * * * *

(c) The initial decision is transmitted to the Secretary by hand-delivery or Department mail, and to the parties by certified mail, return receipt requested, by the Office of Administrative Law Judges.

* * * * *

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

10. Redesignated § 81.42 is revised to read as follows:

§ 81.42 Petition for review of initial decision.

(a) If a party seeks to obtain the Secretary's review of the initial decision of an ALJ, the party shall file a petition for review with the Office of Hearings and Appeals, which immediately forwards the petition to the Office of the Secretary.

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision.

(c) If a party files a petition for review, the party shall serve a copy of the petition on the other party on the filing date by hand delivery or by "overnight or express" mail. If agreed upon by the parties, service of a copy of the petition may be made upon the other party by facsimile transmission.

(d) Any written submission to the Secretary under this section must be accompanied by a statement certifying the date that the filed material was served on the other party.

(e) A petition for review of an initial decision must contain—

(1) The identity of the initial decision for which review is sought; and

(2) A statement of the reasons asserted by the party for affirming, modifying, setting aside, or remanding the initial decision in whole or in part.

(f)(1) A party may respond to a petition for review of an initial decision by filing a statement of its views on the issues raised in the petition with the Secretary, as provided for in this section, not later than 15 days after the date it receives the petition.

(2) A party shall serve a copy of its statement of views on the other party by hand delivery or mail, and shall certify that it has done so pursuant to the provisions of paragraph (d) of this section. If agreed upon by the parties, service of a copy of the statement of views may be made upon the other party by facsimile transmission.

(g)(1) The filing date for written submissions under this section is the date the document is—

(i) Hand delivered;

(ii) Mailed; or

(iii) Sent by facsimile transmission.

(2) If a scheduled filing date falls on a Saturday, Sunday or a Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(e), 3474(a))

11. Redesignated § 81.43 is revised to read as follows:

§ 81.43 Review by the Secretary.

(a) The Secretary's review of an initial decision is based on the record of the case, the initial decision, and any proper submissions of the parties or other participants in the case.

(b) The ALJ's findings of fact, if supported by substantial evidence, are conclusive.

(c) The Secretary may affirm, modify, set aside, or remand the ALJ's initial decision.

(1) If the Secretary modifies, sets aside, or remands an initial decision, in whole or in part, the Secretary's decision includes a statement of reasons that supports the Secretary's decision.

(2) (i) The Secretary may remand the case to the ALJ with instructions to make additional findings of fact or conclusions of law, or both, based on the evidence of record. The Secretary may also remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(ii) If a case is remanded, the ALJ shall make new or modified findings of fact or conclusions of law or otherwise modify the initial decision in accordance with the Secretary's remand order.

(iii) A party may appeal a modified decision of the ALJ under the provisions of §§ 81.42 through 81.45. However, upon that review, the ALJ's new or modified findings, if supported by substantial evidence, are conclusive.

(3) The Secretary, for good cause shown, may remand the case to the ALJ to take further evidence, and the ALJ may make new or modified findings of fact and may modify the initial decision based on that new evidence. These new or modified findings of fact are likewise conclusive if supported by substantial evidence.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(d), 3474(a))

12. Redesignated § 81.44 is amended by revising paragraph (b) to read as follows:

§ 81.44 Final decision of the Department.

* * * * *

(b) If the Secretary modifies or sets aside the ALJ's initial decision, a copy of the Secretary's decision is sent by the Office of Hearings and Appeals to the parties by certified mail, return receipt requested. The Secretary's decision becomes the final decision of the Department on the date the recipient receives the Secretary's decision.

* * * * *

[FR Doc. 93–19448 Filed 8–13–93; 8:45 am]

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federal register

Monday
August 16, 1993

Part VII

Congressional Budget Office

Notice of Transmittal of Sequestration Update Report for Fiscal Year 1994 to Congress and the Office of Management and Budget

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Update Report for Fiscal Year 1994 to Congress and the Office of Management and Budget

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 1994 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 93–19796 Filed 8–13–93; 12:01 pm]

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federal register

Monday
August 16, 1993

Part VIII

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products; Interim Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 93–012I]

RIN 0583–AB67

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to make safe handling instructions mandatory on all raw meat and poultry product labeling. The handling instructions address safe storage of raw product, prevention of cross-contamination, cooking of raw product, and handling of leftovers. The rule provides additional safeguards to protect consumers from exposure to possible bacterial contaminats found in raw meat and poultry products. This action is being taken in an effort to reduce the risk of foodborne illness.

DATES: Interim rule effective date is October 15, 1993; comments must be received on or before September 15, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Patrick J. Clerkin, (202) 254–2537. (See also "Comments" under "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Field Operations Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2537.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this interim 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.

Risk Analysis

This rule will reduce the risk of foodborne illness associated with the handling, preparation, and storage of meat and poultry products. Reduced risk would lead to public health benefits that are measured in terms of reduced medical costs, reduced time loss from work, reduced pain and suffering, and loss of life.

The Department of Agriculture (USDA) has recently published estimates that the annual cost of foodborne illnesses ranges from $5,162 to $6,076 million. The estimated cost of foodborne illnesses attributable to meat and poultry products is $3,880 to $4,330 million annually. The estimated costs by pathogen are contained in Table 1.

The estimates in Table 1 were developed after the widespread outbreak of foodborne illness attributed to *Escherichia coli* 0157:H7 in undercooked hamburgers from a fast-food chain in 1993. Although the States have voted to make foodborne illness from *E. coli* 0157:H7 a disease that must be reported to the Center for Disease Control (CDC), such reporting will not be effective for some time. Thus, cost estimates for *E. coli* should be reviewed as preliminary. Even without CDC reporting, the Department continues to become aware of new cases of illness. Recent cases of illness and death from *E. coli* 0157:H7 attributable to home-prepared hamburgers are discussed elsewhere in this preamble. The gravity of many cases of illness resulting from *E. coli* 0157:H7 and the continuing evidence of consumers undercooking hamburgers creates a public health emergency that is not reflected in the numbers of Table 1. Recent reports of morbidity and mortality indicate a level of risk that has led the Department to issue this rule on an interim final basis.

TABLE 1.—ESTIMATED ANNUAL COSTS FOR SELECTED FOODBORNE PATHOGENS, 1992

Pathogens*	Cases	Deaths	Annual medical and productivity costs ($ million)	Attributable to meat and poultry	
				Percent of cases	Costs** ($ million)
Bacteria:					
Salmonella	1,920,000	960–1,920	$1,188–$1,588	50	$600–$800
Campylobacter jejuni or *coli*	2,100,000	120–360	907–1,016	50	450–500
Escherichia coli O157:H7	7,668–20,448	146–389	229–610	50	100–300
Listeria monocytogenes	1,526–1,581	378–433	209–233	50	100
Parasites:					
*Toxoplasma gondii****	2,090	42	2,628	100	2,630
Trichinella spiralis	131	0	0.8	100	0
Taenia saginata	894	0	0.2	100	0
*Taenia solium*****	210	0	0.1	100	0
Total			5,162–6,076		3,880–4,330

*Analysis assumes 100% of human illnesses are foodborne for *Campylobacter, Escherichia coli, Trichinella,* and the *Taenias* and assumes 96% of *Salmonella* cases, 85% of *Listeria* cases, and 50% of *Toxoplasma* cases are foodborne. Meat and poultry are assumed to be responsible for 100% of foodborne parasitic diseases and 50% of foodborne bacterial diseases.

**Estimates rounded.

***Productivity losses are high for survivors who develop mental retardation or blindness as a result of toxoplasmosis. These costs exclude toxoplasmic encephalitis infections in 2,250 to 10,200 AIDS patients annually which are a significant cause of premature death (50% of cases may also have a foodborne origin).

****Costs are estimated at less than $0.1 million, although estimates do not include costs for cystericercosis which may have an indirect foodborne transmission.

Reference: *Agricultural Outlook,* Economic Research Service, USDA, AO–197 (June 1993), pp. 32–36.

While the safe handling instructions are required for raw meat and poultry products, the instructions will also help prevent all foodborne illnesses that can be prevented by safe handling practices, both at food service facilities and in the kitchens of private residences. In other words, the health risk addressed by this rule is not measured by the costs that can be attributed simply to raw products, but rather by the costs that can be attributed to the full range of unsafe food handling practices that can lead to foodborne illness. These include: (1) Cross-contamination from raw product to a ready-to-eat product such as a tossed salad; (2) cooking to a temperature that does not kill any existing pathogens; (3) recontamination of cooked product with juices from raw product (e.g., using the same plate to carry meat to and from the barbecue grill without washing it before the trip from the grill); (4) leaving leftovers uncovered for long periods of time without refrigeration; and (5) leaving any cooked product at room temperature.

Since most foodborne illness associated with meat and poultry products can be attributed to some improper handling or cooking practice, one can conclude that this rule will address the entire $3,880 to $4,330 million of cost attributable to meat and poultry products. Outbreaks of foodborne illness attributed to contaminated, "ready-to-eat" deli cold-cuts are probably the most removed from safe handling, but even in these cases the messages on refrigerating cooked meat products have an indirect application. Assessments of CDC outbreak data have identified infected food handlers as a potential source of foodborne illness. However, in such cases, it is usually impossible to determine whether the food handler is a victim or a source.

Cost Analysis

The rule provides extensive flexibility for communicating safe handling instructions. The instructions could be incorporated onto existing labels or could be added to packages in the form of pressure-sensitive labels, i.e., self-adhesive stickers similar to address labels commonly used today. For packages that are labeled in official inspected establishments, the firms can decide whether to apply pressure-sensitive labels (self-adhesive stickers) or make permanent modifications to approved labels. Such label modifications will be generically approved.

Retail grocery stores have the same option. Fresh product is normally wrapped in clear plastic wrap and labeled with a pressure-sensitive label that includes the store name and provides spaces for net weight, unit price, and total price.

Based on discussions with manufacturers and suppliers of stickers and pressure-sensitive labels, retail stores are paying from $.01 to $.025 for existing labels. Increasing the size does not have much affect on cost. Adding the text will most likely increase the per label cost from $.0025 to $.005. This analysis assumes that all pre-packaged fresh product already includes some form of commercially prepared label and that the incremental cost of including the safe handling instructions will increase the cost by an estimated $.0025 to $.005 per label. The Department requests specific comments on these assumptions and on the cost of alternative ways of providing safe handling instructions, e.g., repeated instructions on the plastic wrapping.

The Department has developed preliminary cost estimates based on an estimate that consumers purchase approximately 15 billion retail packages of fresh meat and poultry products annually. This estimate is based on two approaches for estimating the number of retail purchases.

Today, consumers purchase between 55 and 60 billion pounds of meat and poultry on a retail weight basis. An estimated 40 billion pounds are consumed as fresh cuts as opposed to processed products such as sausage or chicken soup. An estimated 55 to 65 percent or 22 to 26 billion pounds are purchased at retail stores for household preparation. If the average retail package is 2 pounds, then there are from 11 to 13 billion packages. At 1.5 pounds per package, the estimate increases to 14.7 to 17.3 billion packages.

A second approach is based on the average weekly purchases per household. There are approximately 95 million (March 1992) households in the United States. If each household purchases 3 packages per week, the total is 14.8 billion. A range of 2 to 4 packages per week varies the estimate from 9.9 to 19.8 billion.

Using the estimate of 15 billion packages and the estimate of $.0025 to $.005 per label, the addition of safe handling instructions will cost from $37.5 to $75 million dollars. The Department has estimated that the employee time to apply labels will not change. Most of the cost will be borne by retail stores.

Net Benefit Analysis

The benefits of the rule are directly related to the effectiveness of the safe handling messages in changing consumer or food service employee behavior. Reductions in unsafe handling practices should result in proportional reductions in the number of cases of foodborne illness. That is, a change that reduces unsafe food handling practices by one percent should reduce the number of foodborne illnesses by the same level.

The Department conducted a literature search for possible studies on the effectiveness of safe handling instructions. Such instructions have been used for a wide range of consumer products from medical devices to power tools to pesticides and home cleaning chemicals. The Department is not aware of any quantitative estimate of effectiveness. Most studies focus on the relative effectiveness of different message or mediums.

In order to maximize the benefits of the rule, the Department conducted focus group research to determine which of several safe handling label formats would be most useful to consumers.[1] Six different formats using different messages, some with accompanying symbols, were evaluated. FSIS selected one format based on the preliminary reporting of that evaluation.

In order to increase the effectiveness of safe handling labels, the Department will also implement a comprehensive information and education campaign to increase consumer awareness of the new labels and also increase the level of understanding of the messages the labels are intended to convey. The combined effect of having the most useful label and the accompanying education campaign should assume a relatively high level of effectiveness.

Without a specific estimate for effectiveness in reducing illness, the Department examined the level of effectiveness that would be required to offset the cost estimates discussed above. Using high and low estimates for both costs and benefits, Table 2 shows that an effectiveness level of two percent would yield net benefits for both cost levels and that higher levels of effectiveness would result in substantial net benefits.

[1] A copy of the results of the focus group study is available for public review in the FSIS Hearing Clerk's office.

TABLE 2.—ESTIMATED BENEFITS AND COSTS

[Millions of dollars per year]

Effectiveness in preventing cases of foodborne illness (percentage)	Estimated benefits		Estimated costs		Estimated net benefits	
	Low	High	Low	High	Low	High
1	$38.8	$43.3	$37.5	$75	(36.2)	5.8
2	77.6	86.6	37.5	75	2.6	49.1
5	169	216.5	37.5	75	94.0	179.0
10	388	433	37.5	75	313.0	358.0
20	776	866	37.5	75	701.0	828.5

Executive Order 12778

This interim final rule has been reviewed under 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 requirement on federally inspected meat and 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 and 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 and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. 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 parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this interim final rule 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). The rule affects a substantial number of small entities, but the economic impact will not be significant.

The rule affects both retail stores and inspected establishments. In 1991, USDA estimated there were 253,000 foodstores in the United States. These stores are categorized as follows:

Supermarkets (Sales > $2.5 million each).	23,813
Superettes (Sales < $2.5 million each).	94,647
Covenience Stores	51,000
Specialty Stores	82,895
Total	253,055

Most of the small businesses affected will be superettes and specialty stores, such as meat markets, butcher shops, and locker plants. The specialty store category includes a large number of small businesses that do not sell meat and poultry products, e.g., confectionery stores. Most convenience stores do not sell raw meat and poultry products.

There are currently approximately 6,500 federally inspected meat and poultry establishments. Based on responses to a 1992 survey related to nutrition labeling, an estimated 35 percent of 2,275 establishments ship a fresh product in a consumer-sized package. For the nutrition labeling survey, a consumer-sized package was defined as any package that could be transported in a standard shopping cart, recognizing that consumer packages now include the larger items that consumers purchase at buying clubs or wholesale stores. Consumer-sized packages will have to include the safe handling instructions.

Other establishments ship bulk packages exclusively to the hotel, restaurant, and institutional trade. Such packages will also have to be labeled with safe handling information. Retail establishments, such as supermarkets and meat markets that package products for individual household consumers, will be able to provide safe handling information by such means as pressure-sensitive labels on consumer size packages. Such labeling could be provided without creating a significant economic impact. As discussed earlier, the Department estimates that the maximum cost of bulk pressure-sensitive labels will be from $.01 to $.02 per label, but most retail stores will have the option of modifying existing pressure-sensitive labels for a fraction of that cost. The rule envisions that all labeling could be accomplished during the packaging or wrapping process, thereby minimizing any extra labor.

Inspected establishments will have the option of adding safe handling instructions to the product label by applying a separate pressure-sensitive label or making permanent modifications to approved labels for both consumer-sized packages and institutional-sized packages. Firms will presumably make that choice when the one-time cost of label modifications is less than the continuing material costs for purchasing pressure-sensitive labels.

The events of 1993 resulting from the public health hazard of *E. coli* O157:H7 has raised many issues related to responsibility, product liability, and protection of markets. Labeling rules issued for other consumer products have recognized the benefits of protecting the manufacturer. Safe handling instructions also protect markets by helping to reduce the negative publicity that accompanies the reporting of foodborne illness. Preventing illness protects markets and also protects manufacturers and distributors from the potential costs of product liability claims.

Comments

Interested persons are invited to submit comments concerning this interim final rule. Written comments should be sent to the Policy Office and refer to Docket No. 93–012I. Any person desiring an opportunity for an oral presentation of views, as provided by the Poultry Products Inspection Act, should make such request to Mr. Patrick J. Clerkin so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in

response to this rule will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Introduction

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) direct the Secretary of Agriculture to maintain meat and poultry inspection programs designed to assure consumers that meat and poultry products distributed to them (including imports) are wholesome, not adulterated, and properly marked, labeled, and packaged.

Section 2 of the FMIA (21 U.S.C. 602) and section 2 of the PPIA (21 U.S.C. 451) state that unwholesome, adulterated, or misbranded meat or meat food products and poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly marked, labeled, and packaged products, and result in sundry losses to producers and processors of meat and poultry products, as well as injury to consumers. Therefore, Congress has granted the Secretary authority to regulate meat, meat food, and poultry products to protect consumers' health and welfare. Subsection 1(n)(12) of the FMIA (21 U.S.C. 601(n)(12)) and Subsection 3(h)(12) of the PPIA (21 U.S.C. 453(h)(12)) state that the term "misbranded" applies to any product if it falls to bear, directly thereon or on its container, as the Secretary may by regulations prescribe, the inspection legend, and unrestricted by any of the foregoing, such information as the Secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. Section 7(d) of the FMIA (21 U.S.C. 607(d)) states: "No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted." the PPIA contains similar language in section 8(c) (21 U.S.C. 457(c)).

FSIS carries out its responsibility under these laws by inspecting meat and poultry products and facilities at federally inspected establishments. As part of the inspection, FSIS routinely monitors for the presence of microbial contamination in commercially cooked or processed ready-to-eat meat and poultry products to assure that they are safe. The samples are tested in FSIS laboratories. After product leaves the federally inspected establishment, FSIS compliance officers monitor the product as it is handled, sold, and transported in commerce. State and local food regulatory agencies regulate and inspect grocery stores, restaurants, and other establishments that sell food. The reported incidence of unsafe products reaching consumers is low.

In 1972, the American Public Health Association and eight other public health and consumer interest groups brought suit in the U.S. District Court for the District of Columbia against the U.S. Department of Agriculture alleging that labels placed on meat and poultry products were false and misleading because they failed to warn consumers against the dangers of food poisoning caused by Salmonella and other bacteria. The Court of Appeals affirmed the District Court's order dismissing the action, and ruled that the Secretary of Agriculture did not abuse his discretion by choosing to undertake a consumer education program instead of requiring labeling instructions for meat and poultry products. Since that ruling, USDA has conducted a massive and increasingly targeted food safety campaign to inform consumers about safe handling and cooking of meat and poultry products. FSIS has offered a toll-free nationwide hotline, staffed by food safety specialists, and conducted campaigns, directed at such specialized audiences as food handlers, institutions, health professionals, and at-risk populations, as well as food handlers in the home. Additionally, FSIS has permitted the voluntary labeling of poultry products with safe handling instructions since 1987. FSIS does not monitor participation in voluntary labeling, however, one trade association has said that 75 percent of its members offer handling instructions on their labels.

New Policy Direction

In recent years, FSIS has been aware that a growing percentage of the U.S. population consists of persons lacking experience in food preparation and knowledge of safe food handling and storage methods. Studies of foodborne illness outbreaks have repeatedly shown improper food handling to be the frequent cause of foodborne illnesses. Improper cooling of cooked foods has been ranked as the leading factor. Other factors cited included inadequate cooking, cross-contamination, and inadequate reheating.

Studies of consumer knowledge and practices indicate that a significant number lack basic food safety information and skills, particularly with respect to the relationship between temperature and foodborne illness. A nationwide study done in 1972 (Jones and Weimer) classified 63 percent of a national sample as "high risk" based on the use of one or more food handling practices identified by the researchers as unsafe.[2] A study by Woodburn and VanDeRiet, published in 1985, concluded that cross-contamination between raw and cooked foods, inadequate cooking, and unsafe holding temperatures were frequent food handling practices in the home.[3] A 1990 study of the knowledge of food safety and home food preparation practices in 2,000 randomly selected households (Williamson, Gravani and Lawless) showed that: (1) 18 percent were not concerned or not sure about leaving cooked meat out at room temperature for over 4 hours; (2) 68 percent would leave a large quantity of cooked stew in the pot it was cooked in or would store it in a deep container; (3) 29 percent would leave cooked chicken on the counter to cool before refrigerating it; and (4) 23 percent would thaw hamburger on the countertop at room temperature.[4]

Information from CDC reveals that: (1) Undercooking was a factor in 108 of 345 (31.3 percent) home outbreaks of foodborne illness that occurred between 1973 and 1982 (data includes all foods); and (2) Cooking foods ahead, i.e., 12 hours or more before serving, was a factor in 12.8 percent of the home outbreaks.

While the Agency has long been committed to a program of consumer education to help prevent foodborne illness, as exemplified by its distribution of publications for consumers and its Meat and Poultry Hotline, it has become convinced of the need for more direct methods of placing food safety information in the hands of consumers. Thus, Agency official in early January began to advocate in their speeches and writings that the mandatory safe handling instructions on the labeling of meat and poultry products was a necessary component of a program to combat foodborne illness.

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[2] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[3] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[4] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

The Agency's new policy direction gained additional impetus following the mid-January 1993 outbreaks of a severe food poisoning that led to four deaths among approximately 500 confirmed cases in Washington, Idaho, California, and Nevada. The outbreaks were linked to the pathogenic bacterial strain *E. coli* 0157:H7. Because most of the cases were traceable to undercooked hamburgers served at a fast-food restaurant chain, Federal and local authorities have intensified their regulatory activities. The Secretary of Agriculture has stated that USDA has a moral obligation to do everything possible to prevent future outbreaks caused by *E. coli* 0157:H7 and other pathogens. In accordance with this obligation, FSIS has developed a comprehensive pathogen reduction strategy to reduce the risk of future foodborne illnesses resulting from pathogens associated with meat and poultry products. Mandatory labeling of raw meat and poultry with safe handling instructions is part of that Pathogen Reduction Program.

On February 10, 1993, John Kinsman, *et al.*, filed suit in the U.S. District Court for the District of Columbia to enjoin the Secretary of Agriculture from affixing the official inspection legend to meat and poultry products unless it was accompanied by a label warning the consumer that the meat or poultry product may contain bacteria capable of causing infection, disease, or death and prescribing handling and cooking instructions. On May 5, 1993, USDA and the plaintiffs reached a court-sanctioned agreement under which the suit was dismissed and USDA agreed to publish its anticipated proposed regulation by August 15, 1993, to mandate safe handling labeling requirements for raw meat and poultry products.

In the recent two months, the Department has become aware of nine separate incidents where *E. coli* 0157:H7 has been the cause of illness or death or at least suspected of being the cause. The number of possible incidents and the seriousness of the effects has led the Department to conclude that the public needs additional safe handling information as soon as possible. Packages of meat and poultry products offer a readily available vehicle for reaching most of the population in a short time. The following incidents have led the Department to conclude that it is time to require safe handling information on raw meat and poultry products and require it immediately via the interim final rulemaking process.

San Diego, CA

A woman was diagnosed with *E. coli* 0157:H7. The specific cause of her disease was not determined, but it was suspected that it might be due to the consumption of a hamburger purchased at a fast food restaurant. Her illness was confirmed on July 2, 1993.

Ellensburg, WA

Five people were diagnosed with *E. coli* O157:H7 after having eaten various foods at a pot-luck supper at a Bible camp during the period July 11 through 15. The five cases were confirmed. No source was ever specifically identified.

Vancouver, WA

The health department reported three confirmed cases of *E. coli* O157:H7 in this area. The illnesses were attributed to ground beef products consumed at various fast food restaurants. There was no confirmation of *E. coli* in the product. This was not determined by the State of Washington to be an outbreak. The reason for this is the county reports having a normal background of as many as eight cases per month. Therefore, these three were not considered outside their usual findings.

Corvalis, OR

The health department reports three to five cases of *E. coli* O157:H7 as a result of undercooked hamburger purchased from a local grocery store. This outbreak was reported to USDA on July 30. It is still under investigation. The source of the ground beef has been traced from the grocery store back to a processing plant, and the Department is now determining the plants that supplied meat to the processing company.

Mendoncino, CA

FSIS contacted the Mendoncino County Health Department to follow up on reports of an *E. coli* O157:H7 outbreak in that community. We were notified that around the July 4th holiday, three to four people became ill with *E. coli* O157:H7. Product containing *E. coli* O157:H7 has been recovered from consumers. The product implicated is ground beef sold through a local grocery store. Those people who are ill reported having undercooked hamburgers over the 4th of July holiday. During this investigation there was also an incidental finding of *E. coli* O157:H7 in ground beef at another grocery store. It is not known if this product is associated with this outbreak. That product has since been traced back to a possible source, and similar product is now being withdrawn from the market. One person in this outbreak has died; however, it was an 83 year old woman with other seribus health problems, and her death is not being directly related to the *E. coli.*

Maine

On July 22, 1993, FSIS contacted the state officials to follow-up on reports of an *E. coli* O157:H7 outbreak in Maine. On July 23rd the State reported to us that they thought there was a link among seven persons found positive for *E. coli* O157:H7 and the consumption of meat. There was no one single source identified in this outbreak, although there was a common link to a slaughter plant in the local area. FSIS could not find any positive meat samples, and therefore could not confirm that the slaughter plant was the source of the meat. This case is interesting in that a child, age five, died in late June from *E. coli* O157:H7. It remains unclear as to whether or not this child consumed meat or unpasteurized milk; however, the child lived on a dairy farm and it was possible she came in contact with the bacteria directly from the cattle on the farm. This farm in turn sold cattle to the slaughter plant where other people affected with this disease purchased their meat.

Indiana

An eight month old child died on July 20 diagnosed with hemolytic uremic syndrome (HUS). It is the Department's understanding that *E. coli* O157:H7 has not been isolated in this case, but it is strongly suspected as the cause of HUS.

Chicago, IL

A six year old child died on July 20 diagnosed with HUS. This child was also laboratory negative for *E. coli* O157:H7 although it is a strong consideration in the cause of his death. A meat sample from the family has been submitted for testing, and the results are not yet in.

Michigan

A three year old child died in Michigan on July 30 who was positive for *E. coli* O157:H7 and had a history of having eaten ground beef products prior to the onset of illness. Three children from another family are also all infected with *E. coli* O157:H7, and their family reports having purchased meat from the same grocery store where the meat consumed by the three year old who died was purchased. All four children had a history of having eaten undercooked ground beef. These cases are under investigation.

Under these circumstances, the Department has determined that there is

good cause to publish this interim rule without an opportunity for prior public comment. Immediate action is necessary to protect the public health. However, implementation of the interim rule is delayed for 60 days to enable the affected businesses to obtain the required labeling.

We will consider comments that are received within 30 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we were making to the rule as a result of the comments.

Parameters of Food Safety

After reviewing available information, FSIS in conjunction with the Food and Drug Administration (FDA) identified the following parameters of safe handling by consumers: how to safely store raw product and thaw frozen product; how to avoid cross-contamination during preparation; how to cook for optimal safety and palatability; and, how to store leftovers after preparation. For institutions, hot holding of prepared food is an additional parameter. (The term institutions as used throughout this preamble includes hotels, restaurants, or similar institutions.) In addition, the Agency is requiring that the safe handling instructions include a rationale statement specifying the reason why it is important to follow such instructions. The Agency believes that consumers will pay more attention to the safe handling instructions if they understand that mishandling will lead to the growth of bacteria and possibly to illness.

Labeling

Various methods have been used in the past to inform consumers of handling instructions. Such methods have included putting the instructions on the product label, on inserts, on tags attached to the product, and on point of purchase materials displayed near the product at the point of sale. Some research has indicated that such information was best communicated by means such as point of purchase information and other consumer education efforts. However, other published research has shown that the best location for handling information is on the outside of the package of meat and poultry products where it will be prominent and visible at the time of purchase. FSIS has concluded that the outside label is the most appropriate location for safe handling instructions.

The Agency strongly believes that safe handling instructions must be visible on products at the time they are purchased. The number of packaged raw products that are not large enough to accommodate these instructions and all other mandatory information is not significant. The Agency is, nevertheless, interested in receiving comments on the need for an alternative means of providing for safe handling instructions, e.g., requiring the rationale statement on the outside label with a referral statement indicating that important safe handling information is located on an insert label.

The Agency considered three options for presenting safe handling information on the label. These options included long word messages, short word messages, and short word messages with symbols or graphic representations to accompany the message. To collect information on which format would most effectively influence consumer behavior, FSIS initiated consumer focus-study research.

In the FSIS initiated consumer focus-study, most participants wanted to see safe handling instructions on raw meat and poultry products. Consumers in the study expressed a preference for the safe handling instructions to be on the package label and felt that other labeling, such as pamphlets or in-store signs, should only be used to supplement package labels. Instructions with graphic illustrations were generally preferred to those without graphic illustrations and the short word messages were preferred to the long word messages. Also, most participants of the focus group study felt that the rationale statement was a necessary part of the safe handling instructions.

Current Regulations

The Federal meat and poultry products inspection regulations currently require the placement of safe handling statements on packaged products that require special handling to maintain their wholesome condition. Sections 317.2 and 381.125 of the Federal meat and poultry products inspection regulations (9 CFR 317.2(k) and 9 CFR 381.125, respectively) provide that packaged products which require special handling to maintain their wholesome condition shall have prominently displayed on the principal display panel of the label the statement: "Keep Refrigerated," "Keep Frozen," "Perishable Keep Under Refrigeration," or such similar statement as the Administrator may approve in specific cases.

The Rule

FSIS is amending the Federal meat and poultry products inspection regulations by mandating the inclusion of safe handling instructions on the labels of certain meat and poultry products along with a rationale statement to indicate the reason why it is important to follow such handling instructions. Products requiring safe handling instructions are those that are uncooked or have not been otherwise further processed to make them ready-to-eat. The Department has established required cooking temperatures for certain beef, pork, poultry, and patty products. These requirements are set forth at 9 CFR 318.17, 318.10, 381.150, 318.23, respectively. The Department has also established processing requirements for the curing or other treatment of certain meat products to control microbial activity. Some of these products are identified in part 319 of the meat inspection regulations. These cooked products and products that have been otherwise further processed so as to render them ready-to-eat are not considered to be a sufficient risk of microbial contamination to warrant the application of safe handling labels. FSIS is interested in comments about the appropriateness and inclusiveness of these categories.

The safe handling instructions should (a) inform consumers of how to safely store raw product and include an appropriate method of thawing product, if it is frozen; (b) inform consumers of how to avoid cross-contamination of food during preparation; (c) provide cooking instructions; and (d) inform consumers of how to handle leftovers including a 2-hour maximum on allowing food to stand at room temperature.

The rule provides for the use of two different rationale statements depending on where the product is labeled. One rationale statement will be used on products fully labeled at the federally inspected establishments and a second rationale statement will be used on products labeled at retail. The latter reflects the fact that the product has been further processed without continuous inspection.

The rule requires the following four safe handling statements for use on the label of products distributed to consumers: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave; (2) Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry]; (3) Cook thoroughly; and (4) Refrigerate

leftovers within 2 hours. In addition, the graphic illustrations depicting the essence of each message shall be displayed next to the statement as shown in Exhibit 1. The Agency is interested in comments and suggestions regarding the appropriateness and effectiveness of the symbols.

BILLING CODE 3410-D-C

Exhibit 1

Safe Handling Instructions

This product was inspected for your safety. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.



Keep refrigerated or frozen.
Thaw in refrigerator or microwave.



Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry].



Cook thoroughly.



Refrigerate leftovers within 2 hours.

BILLING CODE 3410-D-C

The rule requires the following four safe handling statements for use on the label of products distributed to institutions: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave; (2) Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry]; (3) Cook thoroughly; and (4) Keep foods hot at 140 °F or higher. Immediately after service, refrigerate leftovers. In addition, the graphic illustrations depicting the essence of each message shall be displayed next to the statement as shown in Exhibit 2.

BILLING CODE 3410-DM

Exhibit 2

Safe Handling Instructions

This product was inspected for your safety. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.



Keep refrigerated or frozen.
Thaw in refrigerator or microwave.



Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry].



Cook thoroughly.



Keep foods hot at 140° F or higher.
Immediately after service, refrigerate leftovers.

BILLING CODE 3410-D-C

Each of the four safe handling instructions must appear on the product label. FSIS is allowing safe handling instructions to be added to labels by the manufacturer and to be approved under the provisions of generic label approval since the regulations prescribe the exact language of the safe handling instructions. The Agency is interested in comments pertaining to whether manufacturers should be permitted to use other special handling statements that are different than the aforementioned statements or any variations of such statements with the approval of the Administrator.

The safe handling instructions must accompany each product and must appear either on the principal display panel or the information panel of the product label. The safe handling information may be supplemented by point-of-purchase materials, videos, live demonstrations or other media. Examples of point-of-purchase materials to display safe handling information may include large placards (e.g., wall posters, signs, aisle hangers), pamphlets, brochures, and notebooks.

FSIS is exempting products intended for further processing by an inspected establishment from mandatory safe handling labeling requirements. Since products for further processing by another Federal or State establishment will not be available to consumers or food service institutions, FSIS believes it is unnecessary to require safe handling instructions on such packaging.

Failure to provide safe handling instructions on the labeling of products subject to these regulations will be regarded as misbranding under section 1 of the FMIA and section 3 of the PPIA.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry inspection.

Interim Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations 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 is amended by adding a new paragraph (l) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(l) Safe handling instructions shall be provided for: All meat and meat products of cattle, sheep, goat, horse, or other equine not heat processed in a manner that conforms to the time and temperature combinations in the Table for Time/Temperature Combination For Cooked Beef, Roast Beef, and Cooked Corned Beef in § 318.17, prior to being removed from the cooking medium or that have not undergone other further processing that would render them ready-to-eat; all meat or meat products of swine identified in § 318.10(a)(1) as being classed as products that are customarily well cooked in the home or elsewhere, before being served to the consumer; and all comminuted meat patties not heat processed in a manner that conforms to the time and temperature combinations in the Table for Permitted Heat-Processing Temperature/Time Combinations For Fully-Cooked Patties in § 318.23, prior to being removed from the cooking medium; except as exempted under paragraph (l)(4) of this section.

(l)(1)(i) Safe handling instructions shall accompany every meat or meat product, specified in this paragraph (l), destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label's principal display panel or on the information panel. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(ii) The safe handling information shall be presented on the label under the heading "Safe Handling Instructions" which shall be set in type size larger than the print size of the rationale statement and handling statements as discussed in paragraphs (l)(2) and (l)(3) of this section. The safe handling information shall be set off in a box by use of hairlines and shall be all black or one color type printed on a white or other neutral contrasting background whenever practical.

(2) (i) The labels of the meat and meat products, specified in this paragraph (l), packaged and labeled in official establishments shall include the following rationale statement as part of the safe handling instructions, "This product was inspected for your safety. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(ii) The labels of the meat and meat products, specified in this paragraph (l), packaged and labeled at retail shall include the following rationale statement as part of the safe handling instructions, "This product was prepared from inspected and passed meat. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(3) (i) The meat and meat products, specified in this paragraph (l), destined for household consumers shall bear the labeling statements:

(A) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(B) Keep raw meat separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat. (A graphic illustration of a bar of soap shall be displayed next to the statement.);

(C) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(D) Refrigerate leftovers within 2 hours. (A graphic illustration of a clock shall be displayed next to the statement.)

(ii) The meat or meat products, specified in this paragraph (l), destined for hotels, restaurants, or similar institutions shall bear the labeling statements:

(A) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(B) Keep raw meats separate from other foods. Wash working surfaces (including cutting boards), utensils and hands after touching raw meat. (A graphic illustration of a bar of soap shall be displayed next to the statement.);

(C) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(D) Keep foods hot at 140 °F or higher. Immediately after service, refrigerate leftovers. (A graphic illustration of a clock shall be displayed next to the statement.)

(4) Meat or meat products intended for further processing at another official establishment are exempt from the requirements prescribed in paragraphs (l)(1) through (l)(3) of this section.

3. Section 317.5 is amended by deleting the word "or" following the semicolon at the end of paragraph (b)(12), replacing the period at the end of paragraph (b)(13) with a semicolon followed by the word "or", and adding a new paragraph (b)(14) to read as follows:

§ 317.5 Generically approved labeling.

* * * * *

(b) * * *

(14) The addition of safe handling instructions as required by § 317.2 of this subchapter.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. 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.

5. Section 381.125 is amended by designating the current paragraph as (a) and adding a new paragraph (b) to read as follows:

§ 381.125 Special handling label requirements.

* * * * *

(b) Safe handling instructions shall be provided for all poultry products not heat processed in accordance with the provisions of § 381.150(b) or that have not undergone other further processing that would render them ready-to-eat, except as exempted under paragraph (b)(4) of this section.

(1) (i) Safe handling instructions shall accompany the poultry products, specified in this paragraph (b), destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label's principal display panel or on the information panel. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(ii) The safe handling information shall be presented on the label under the heading "Safe Handling Instructions" which shall be set in type size larger than the print size of the rationale statement and handling statements as discussed in paragraphs (b)(2) and (b)(3) of this section. The safe handling information shall be set off in a box by use of hairlines and shall be all black or one color type printed on a white or other neutral contrasting background whenever practical.

(2) (i) The labels of the poultry products, specified in this paragraph (b), packaged and labeled in official establishments shall include the following rationale statement as part of the safe handling instructions, "This product was inspected for your safety. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(ii) The labels of the poultry products, specified in this paragraph (b), packaged and labeled at retail shall include the following rationale statement as part of the safe handling instructions, "This product was prepared from inspected and passed poultry. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(3) (i) Poultry products, specified in this paragraph (b), destined for household consumers shall bear the labeling statements:

(A) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(B) Keep raw poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw poultry. (A graphic illustration of a bar of soap shall be displayed next to the statement.);

(C) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(D) Refrigerate leftovers within 2 hours. (A graphic illustration of a clock shall be displayed next to the statement.)

(ii) Poultry products, specified in this paragraph (b), destined for hotels, restaurants, or similar institutions shall bear the labeling statements:

(A) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(B) Keep raw poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw poultry. (A graphic illustration of a bar of soap shall be displayed next to the statement.);

(C) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(D) Keep foods hot at 140 °F or higher. Immediately after service, refrigerate leftovers. (A graphic illustration of a clock shall be displayed next to the statement.)

(4) Poultry products intended for further processing at another official establishment are exempt from the requirements prescribed in paragraphs (b)(1) through (b)(3) of this section.

6. Section 381.134 is amended by deleting the word "or" following the semicolon at the end of paragraph (b)(12), replacing the period at the end of paragraph (b)(13) with a semicolon followed by the word "or", and adding a new paragraph (b)(14) to read as follows:

§ 381.134 Generically approved labeling.

* * * * *

(b) * * *

(14) The addition of safe handling instructions as required by § 381.125 of this subchapter.

Done at Washington, DC, on: August 12, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19797 Filed 8–13–93; 8:45 am]

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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.

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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
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[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.

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[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.

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