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WHO: The Office of the Federal Register.

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WHEN: March 16 at 9:00 am
WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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Rules and Regulations

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531, 532, 550, and 575

RIN 3206–AF84

Special Pay Entitlements for Law Enforcement Officers

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM), in conformance with amendments to the Federal Employees Pay Comparability Act of 1990 (FEPCA) made by the Technical and Miscellaneous Civil Service Amendments Act of 1992, is issuing final regulations to amend the definition of "law enforcement officer" for certain pay purposes and expand coverage of the special maximum limitation on relocation bonuses for law enforcement officers to five additional categories of law enforcement employees.

EFFECTIVE DATE: These final regulations are effective on April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg, (202) 606–1413.

SUPPLEMENTARY INFORMATION: On January 8, 1993, OPM published interim regulations to implement certain provisions of the Technical and Miscellaneous Civil Service Amendments Act of 1992 (Pub. L. 102–378, October 2, 1992). These provisions include (1) an expanded definition of "law enforcement officer" in section 5541 of title 5, United States Code (with conforming amendments in 5 U.S.C. 4521, 5542, and 5547, and section 402 of FEPCA); (2) an amendment to section 404 of FEPCA to provide OPM with the authority to determine the extent to which a special pay adjustment for law enforcement officers may be paid to an employee receiving a special salary rate under 5 U.S.C. 5305 or similar provision of law; and (3) an amendment to section 405 of FEPCA to extend application of the special maximum limitation on relocation bonuses for law enforcement officers to the categories of law enforcement employees listed in section 405 of FEPCA—i.e., Park Police officers, Secret Service Uniformed Division officers, special agents in the Diplomatic Security Service, and probation and pretrial services officers.

The 60-day public comment period ended on March 9, 1993. Comments were received from one Federal agency, one employee organization, and one individual. These comments are summarized below.

Expanded Definition of "Law Enforcement Officer"

An agency commented that the provisions in the technical amendments to FEPCA providing special pay adjustments for supervisory and administrative law enforcement employees who are not eligible for special law enforcement retirement coverage are confusing and that the criteria should be applied consistently across the board. These provisions are in law, and OPM does not have the authority to change them. The law provides four definitions of "law enforcement officer" for purposes of special pay adjustments that differ according to an employee's retirement coverage and whether his or her position is or is not supervisory or administrative.

An employee who meets the definition of "law enforcement officer" in section 5541(3) of title 5, United States Code, must also be subject to the provisions of chapter 51 of title 5, United States Code (Classification), in order to be entitled to a special pay adjustment provided by section 404 of FEPCA. To meet the definition, an employee must be a "law enforcement officer" who—

(1) Is subject to the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), is in a primary (nonsupervisory) or secondary (supervisory or administrative) law enforcement position, and is actually covered by the corresponding special law enforcement retirement provisions of CSRS or FERS;

(2) Is subject to (CSRS), is in a secondary (supervisory or administrative) position that has been approved for law enforcement retirement purposes, but is not eligible for law enforcement retirement coverage;

(3) Is subject to FERS and, as in (2), is in an approved secondary position, but is not eligible for law enforcement retirement coverage; or

(4) Is not subject to either CSRS or FERS and is in a position that OPM determines would satisfy one of the other three conditions cited above.

In addition, an employee who has had law enforcement retirement coverage granted retroactively for service while subject to 5 U.S.C. chapter 51 is entitled to the special pay adjustment retroactively.

An agency commented that there is a lack of congruence between the definitions of "law enforcement officer" under CSRS and FERS and that the classification standards should provide specific guidance for linking law enforcement duties to the definition of "law enforcement officer" for retirement purposes. Questions that arise concerning law enforcement duties for the purpose of determining an employee's entitlement to these special pay adjustments must be handled within the context of the technical amendments to FEPCA and law enforcement retirement law and regulations. Such issues are not within the scope of a classification standard. Adding a discussion of these issues to classification standards would add unnecessarily to the complexity of the standards without adding materially to the quality of information already provided.

An employee organization commented that the definitions of "law enforcement officer" in these regulations should provide guidance on specific positions, job series, or duties. Such guidance is beyond the scope of these regulations. The criteria for approval of a position as a primary or secondary law enforcement position are in 5 CFR part 831, subpart I, for employees subject to CSRS, and in 5 CFR part 842, subpart H, for employees subject to FERS. Most employees who are covered by law enforcement retirement provisions are criminal investigators, Border Patrol Agents, Deputy U.S. Marshals, correctional officers, or support personnel in correctional institutions who have frequent and direct contact with inmates. Most Federal police officers are

not covered by law enforcement retirement provisions.

Basic Pay for Computation of Special Pay Adjustments

An agency commented that some of its attorneys and accountants are on nationwide special rates under 5 U.S.C. 5305 that are not specifically related to law enforcement duties. Some of these attorneys and accountants have been granted retroactive coverage under the law enforcement retirement provisions. The agency believes special pay adjustments for LEO's should not be based on nationwide special rates unless the special rates are directly related to law enforcement duties.

The interim regulations for special pay entitlements for law enforcement officers published on January 8, 1993, provided for computation of special pay adjustments on the basis of a nationwide or worldwide special salary rate under 5 U.S.C. 5305. Such a rate was included in the definition of "scheduled annual rate of pay" in § 531.301 of title 5, Code of Federal Regulations.

In developing regulations for the implementation of locality-based comparability payments under 5 U.S.C. 5304, OPM determined that a special law enforcement adjusted rate of pay should not be based on a nationwide or worldwide special salary rate under 5 U.S.C. 5305. The final regulations for locality-based comparability payments published on December 30, 1993, [58 FR 69169] removed special rates of pay under 5 U.S.C. 5305 from the definition of "scheduled annual rate of pay" in § 531.301. It should be noted that special pay adjustments continue to be based on the special rates for law enforcement officers provided by section 403 of FEPCA. For law enforcement officers who were receiving special pay adjustments on top of special rates under 5 U.S.C. 5305, the regulations established a continued rate of pay equal to the rate received before this change became effective so that there would be no loss in pay.

Miscellaneous

The Office of Management and Budget changed the title of the Boston CMSA to the Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA, effective on June 30, 1993. (Although the title of the Boston CMSA changed, the geographic coverage did not change). Also, section 628 of the Treasury, Postal Service, and General Government Appropriations Act, 1994 (Pub. L. 103–123, October 28, 1993), amended section 404 of FEPCA by striking "Washington, DC–MD–VA Metropolitan Statistical Area" and inserting in its place "Washington-Baltimore, DC–MD–VA–WV Consolidated Metropolitan Statistical Area." This amendment became effective on October 28, 1993. Accordingly, OPM is revising the titles of the Boston and Washington metropolitan statistical areas in paragraph (a) of the definition of "special pay adjustment area" (§ 531.301) and in the chart in § 531.302(a).

An individual called OPM staff by telephone and pointed out that an incorrect citation for the definition of "law enforcement officer" was used in 5 CFR 575.302. OPM is revising § 575.302 to substitute the correct reference.

OPM is taking this opportunity to make technical corrections to two additional regulatory sections to conform with changes in law. The Technical and Miscellaneous Civil Service Amendments Act of 1992 (Pub. L. 102–378, October 2, 1992) revised the divisor for computing overtime pay for certain prevailing rate employees (i.e., those employees whose pay is fixed on either a monthly or annual basis) from 2,080 to 2,087. The amendment became effective on the first day of the first pay period beginning on or after October 2, 1992. OPM is revising 5 CFR 550.113 accordingly.

In addition, OPM is correcting erroneous citations in 5 CFR 531.205(a)(3) and (4) by removing the reference to "5 U.S.C. 5305" and inserting "5 U.S.C. 5303." Prior to enactment of FEPCA, annual adjustments to pay schedules were covered under section 5305 of title 5, United States Code. As a result of the FEPCA amendments, annual adjustments are now covered under section 5303. The references in § 531.205(a) must be changed accordingly.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 531

Government employees, Law enforcement officers, Wages.

5 CFR Part 532

Administrative practices and procedures, Freedom of Information, Government employees, Reporting and recordkeeping requirements, Wages.

5 CFR Part 550

Administrative practices and procedures, Claims, Government employees, Wages.

5 CFR Part 575

Government employees, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, the interim rule amending 5 CFR parts 531, 532, 550, and 575, published at 58 FR 3199 on January 8, 1993, as amended by the final rule published at 58 FR 69169 on December 30, 1993, is adopted as final with the following additional changes:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, 5338, and chapter 54; E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316.

Subpart A also issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), 104 Stat. 1462, 5 U.S.C. 5304, 5305, and 5553, and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), 5402, and 7701(b)(2);

Subpart C also issued under section 404 of FEPCA, 104 Stat. 1466, section 3(7) of Pub. L. 102–378 (October 2, 1992), section 302 of FEPCA, 104 Stat. 1462, and 5 U.S.C. 5304, 5305, and 5553.

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553, and E.O. 12883, 58 FR 63281, November 29, 1993.

§ 531.205 [Amended]

2. In § 531.205, paragraphs (a)(3) and (4) are amended by removing the reference "5 U.S.C. 5305" and inserting in its place "5 U.S.C. 5303".

3. In § 531.301, under the definition of "special pay adjustment area," paragraphs (a) and (h) are revised to read as follows:

§ 531.301 Definitions.

* * * * *

Special pay adjustment area * * *

(a) Boston-Worcester-Lawrence, MA–NH–ME–CTCMSA;

* * * * *

(h) Washington-Baltimore, DC-MD-VA-WV CMSA.

4. In § 531.302, paragraph (a) is revised to read as follows:

§ 531.302 Determining special law enforcement adjusted rates of pay.

(a) To determine the special law enforcement adjusted rate of pay, the

scheduled annual rate or pay for a law enforcement officer whose official duty station is in one of the special pay adjustment areas listed below shall be multiplied by the factor shown for that area:

Special pay adjustment area	Factor
Boston-Worcester-Lawrence, MA-NH-ME-CT CMSA	1.16
Chicago-Gary-Kenosha, IL-IN-WI CMSA	1.04
Los Angeles-Riverside-Orange County, CA CMSA	1.16
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA CMSA	1.16
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD CMSA	1.04
San Francisco-Oakland-San Jose, CA CMSA	1.16
San Diego, CA MSA	1.08
Washington-Baltimore, DC-MD-VA-WV CMSA	1.04

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for subpart A of part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5548, and 6101(c); E.O. 12748, 3 CFR 1991 Comp., p. 316.

2. In § 550.113, paragraphs (d) (1) and (2) are revised to read as follows:

§ 550.113 Computation of overtime pay.

* * * * *

(d) * * *

(1) If the rate of basic pay of the employee is fixed on an annual basis, divide the rate of basic pay by 2,087 and multiply the quotient by one and one-half; and

(2) If the rate of basic pay of the employee is fixed on a monthly basis, multiply the rate of basic pay by 12 to derive an annual rate of basic pay, divide the annual rate of basic pay by 2,087, and multiply the quotient by one and one-half.

* * * * *

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

3. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316.

4. In § 575.302, paragraph (a)(4) is revised to read as follows:

§ 575.302 Delegation of authority.

(a) * * *

(4) A position as a law enforcement officer, as defined in § 550.103 of this chapter;

* * * * *

[FR Doc. 94–5785 Filed 3–11–94; 8:45 am]

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5 CFR Part 532

RIN 3206–AF61

Prevailing Rate Systems; Champaign, Illinois, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to abolish the Champaign, IL, Federal Wage System nonappropriated fund (NAF) wage area for pay-setting purposes. With the closing of Chanute Air Force Base in August 1993, the only NAF employees remaining in the Champaign wage area are those located in Vermilion County, IL. This regulation assigns Vermilion County to the Marion, IN, NAF wage area.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On November 10, 1993, OPM published an interim rule abolishing the Champaign, IL, Federal Wage System NAF wage area and assigning Vermilion County, IL, to the Marion, IN, wage area (58 FR 59639). OPM received no comments during the 30-day comment period. However, the interim regulation gave a March 4, 1994, effective date coinciding with the anticipated effective date of the Marion wage schedule (reflecting the 90-day delay required by law since 1984). Since the publication of the interim rule, Public Law 103–123, which phases out the 90-day delay, was enacted. The new law provides that wage adjustments will be effective on the later of the normal wage adjustment date for the wage area or the first day of the first pay period beginning on or after January 1, 1994. The normal wage adjustment dates for both the Champaign and Marion wage areas were in December 1933. Hence under the new law, wage adjustments for both of these wage areas would be effective on the first day of the first pay period beginning on or after January 1, 1994. Because of the interim rule abolishing the Champaign NAF wage area, there is no new wage schedule for Champaign. In order that Vermilion County employees may receive a pay adjustment in January 1994, as required by Public Law 103–123, the effective date of the wage area redefinition must be changed from March 4, 1994, to January 1, 1994.

Waiver of 30-Day Delay in Effective Date of Final Regulation

Pursuant to section 553(d)(3) of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective retroactively to January 1, 1994, so that Vermilion County employees may receive the pay adjustment required by Public Law 103–123.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and record keeping requirements, Wages.

U.S. Office of Personnel Management

Lorraine A. Green,

Deputy Director.

Accordingly the interim rule amending 5 CFR part 532 published on November 10, 1993, (58 FR 59639), is adopted as final with the following change:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix D to subpart B is amended by revising the for "Vermilion" to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * * *

Indiana

Marion

Survey area

Indiana:

Marion

Area of application: Survey area plus:

Vermilion [1]

[1] Effective date January 1, 1994.

* * * * *

[FR Doc. 94–5784 Filed 3–11–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1703

RIN 0572–AA87

Rural Economic Development Loan and Grant Program; Grants

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its regulation on the Rural Economic Development Loan and Grant Program. This amended regulation establishes procedures for approving and administering grants, clarifying the eligible uses of grant funds, supplemental funds requirements, and administrative requirements for grant funds. The amendments contained in this final rule will facilitate the process whereby REA borrowers can apply to REA for community development grant funding.

EFFECTIVE DATE: This regulation is effective April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, telephone number (202) 720–9552.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) will not have any retroactive effect; and (3) will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act

The Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on current and historical funding levels for this program and a projected average size loan and/or grant in the range of $300,000 to $400,000, it is estimated that 50 to 60 loans and/or grants will be made nationwide each year. It is projected that the Rural Economic Development Loan and Grant Program will have a limited impact upon small businesses because of the program's unique delivery system; i.e., loans and grants will be made through REA financed electric and telephone cooperatives or companies. These entities do not operate as credit institutions, thus they do not seek funds for the expressed purpose of loan portfolio expansion. Rather, REA financed entities request REA funding through this program to enhance economic development in rural areas by funding a limited number of selected development projects. Since credit is channeled to areas which are generally underdeveloped and financially depressed, job creation and economic development resulting from newly emerging businesses and community facilities funded by REA does not pose undue competition or other adverse effects upon existing businesses. Therefore, this final rule will have no effect upon businesses or entities other than those to be funded through this program.

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Intergovernmental Review

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials, with the exception of applications for Project Feasibility Studies. A notice informing the public of the intergovernmental review coverage was published in the **Federal Register** on March 20, 1989, at 54 FR 11426.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.854, Rural Economic Development Loans and Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 9609511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this final rule have been approved by OMB under control number 0572–0090. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

Background

On February 15, 1989, REA published the final rule, 7 CFR 1709, subpart B, in the **Federal Register** (54 FR 6867), implementing the Rural Economic Development Loan and Grant Program to provide funds to REA Borrowers under the Rural Electrification Act of 1936, as amended (7 USC 901 *et seq.*) (Act). This program provides zero-interest loans to REA Borrowers for the promotion of rural economic development and job creation projects. On September 27, 1990, REA changed the designation of this rule from 7 CFR part 1709 to part 1703 (55 FR 39394). On September 25, 1992, REA published a final rule in 7 CFR 1703 subpart B (57 FR 44317) to revise the loan program. The revision provided additional information to potential applicants on the selection factors and rating criteria, allowed monthly submittal of applications and established a maximum amount of project funding as a fixed percentage of allocated funds. Subsequently, a proposed rule was published on October 12, 1993 (58 FR 52688), to establish procedures for approving and administering grants and make minor changes to enhance the overall program delivery for the zero-interest loan and grant program. This final rule contains the provisions set forth in the proposed rule published October 12, 1993.

This rule contains provisions for grant funds to be used for the following purposes:

1. The establishment and/or operation of a revolving loan fund by REA Borrowers; and,

2. Pass-through grants in conjunction with loans for: (a) Project feasibility studies and technical assistance for community development, business start-ups, business planning, and market

research, (b) business incubators established by non-profit organizations, (c) community development assistance by non-profit organizations, (d) projects operated on a profit or non-profit basis that enhance the overall quality of medical care of rural residents, and (e) projects by profit or non-profit organizations which encourage the use of advanced telecommunications for educational and medical services.

Several conditions for grant making have been established under this program in order to maximize the benefits of the grant program, conserve the limited funds available, and provide for the efficient administration of grant making by REA:

1. With the exception of the establishment and/or operation of a revolving loan program, grants will be made only in conjunction with rural development loans. For grants to REA Borrowers to establish revolving loan funds, REA Borrowers will be required to commit their funds in an amount no less than 20 percent of the REA grant. For all other projects eligible for loan and grant funding, that portion of project cost eligible for REA funding may be funded up to 20 percent with grant funds.

2. As with zero-interest loans, all REA projects funded with grants will require a minimum of 20 percent supplemental funding for project costs. Supplemental funds may come from the project owner in the form of equity funds, private sources, state and local government sources, other Federal Government sources, the borrower, or other sources.

3. For grants made in conjunction with zero-interest loans, grant funding will be provided only in sufficient amount necessary for a feasible project. A project which generates sufficient revenue to show feasibility without grant funds is not eligible for a grant.

4. In determining the eligible amount of a grant, REA will base the appropriate amount of grant funding on a typical year of operation, when the project has generally reached its target income earning potential.

5. Grant funding will be channeled, to the extent practicable, to non-profit entities which have a broad impact on rural economies. However, grant funding will be available for project feasibility studies and technical assistance irrespective of entity status. Also, grant funding will be provided irrespective of entity status for enhancement of medical care and advanced telecommunications for educational and medical services.

In addition to grant making provisions, several changes have been made to the loan provisions of the Rural Economic Development Loan and Grant Program. These changes, addressed in detail in the proposed rule published on October 12, 1993, are as follows:

(1) Paragraph (d) of § 1703.21 has been revised to require Borrowers to deposit zero-interest loan funds into their construction accounts.

(2) Paragraph (b) of § 1703.28 has been revised to eliminate the $400,000 limitation on the size of zero-interest loans and grants and set the maximum amount not to exceed 3 percent of the projected amount of zero-interest loan and grant funds available each year. However, the REA Administrator will retain the authority to limit funding below the 3 percent level, and a decision in this regard will be published in the **Federal Register** for each fiscal year. For fiscal year 1994, the REA Administrator has determined the maximum amount of a loan and grant to be $400,000.

(3) To provide REA Borrowers additional flexibility to fund worthwhile community development projects, paragraph (e) of § 1703.46 has been eliminated to remove the prohibition against funding recreational facilities unless they convincingly demonstrate that they would be an integral part of a tourism industry in their area.

(4) Paragraph (b) of § 1703.61 has been amended to clarify that the grant portion of the zero-interest loan and grant will be disbursed to the borrower only upon completion of the project. This will ensure that grant funds are handled so as to minimize the time between disbursement and authorized use to comply with USDA's Federal Assistance Uniform Regulation, 7 CFR parts 3015 and 3016.

(5) Paragraph (b) of § 1703.66 has been revised to require the recipients of pass-through loans and grants to furnish a record of receipts showing total project costs to verify that no greater than 80 percent of project costs have been funded with REA zero-interest loan and grant funds.

(6) Paragraph (e) of § 1703.66 has been revised to allow REA field accountants to provide a rural economic development review of zero-interest loans and grant funds. This revision will, in many cases, save REA Borrowers thousands of dollars by eliminating costs of formal audits which were previously required in accordance with the provisions of 7 CFR part 1773, "REA Policy on Audits of Electric and Telephone Borrowers."

(7) Paragraph (g) of § 1703.66 has been revised to clarify that for pass-through zero-interest loans and grants, REA Borrowers must require project owners to provide sufficient financial, accounting and budget information, and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016, as appropriate for non-profit entities, and REA rural economic development loan reviews for projects in a for-profit status. Likewise, paragraph (g) has been revised to require REA Borrowers receiving grants for establishment of revolving loan funds to furnish information to allow audits in accordance with USDA departmental grant regulations. Copies of these grant regulations are available to REA Borrowers by request.

Comments

REA received 24 comments regarding the proposed rule which were taken into consideration in preparing the final rule. Comments were received from the following:

(1) Visions Five Group.
(2) Southeast Alabama Regional Planning and Development Commission.
(3) Coastal Area District Development Authority.
(4) LaCreek Electric Association, Inc.
(5) Nebraska Rural Electric Association.
(6) National Rural Electric Cooperative Association.
(7) National Telephone Cooperative Association.
(8) Edison Electric Institute.
(9) East River Electric Power Cooperative.
(10) Carolina Electric Cooperatives.
(11) Sequachee Valley Electric Cooperative.
(12) Mid-Cumberland Area Development Corporation.
(13) Mid-East Commission.
(14) McIntosh Trail Regional Development Center.
(15) North Dakota Association of Rural Electric Cooperatives/North Dakota Association of Telephone Cooperatives.
(16) Greater Egypt Regional Planning.
(17) Southwest Tennessee Development District.
(18) Southwest Arkansas Planning and Development District.
(19) Eastern Panhandle Regional Planning and Development Council.
(20) Northeast South Dakota Energy Conservation Corporation.
(21) National Association of Development Organizations.
(22) North Dakota Commissioner of Agriculture.
(23) Region Nine Development Commission.
(24) Purchase Area Development District.

The comments from various organizations including REA Borrowers, electric and telephone utility trade organizations, economic development organizations and state governments reflected broad support for the proposed rule.

Most of the organizations made specific recommendations on the

proposed rule. REA has considered all comments in finalizing this regulation.

A number of the comments were from entities that administer existing Revolving Loan Funds (RLFs) or organizations representing entities that administer revolving loan programs. These organizations feel that grants should not be directed to REA Borrowers exclusively, but also to existing organizations not financed by REA that operate RLFs, since REA Borrowers do not serve all of rural America. They also are concerned that they would be unable to compete with the REA Borrowers' revolving funds zero-interest rate loans.

First, grants, as well as zero-interest loans administered exclusively through REA Borrowers are in accordance with directives established in the Omnibus Reconciliation Act of 1987, (Pub. L. 100–102, 101 Stat. 1330–20). This law was created in a context where electric and telephone Borrowers who had made prepayments on loans into cushion of credit accounts could utilize a Rural Development Subaccount to collectively draw from the interest earnings from the Borrowers' cumulative credit resources to reinvest into local economic development projects. The provisions of the proposed rule making grant funds available exclusively to REA Borrowers, as a result of their prepayments, are governed by legislation.

REA acknowledges, however, that many rural development organizations are well qualified to administer grant funds, and they provide a valuable resource for local or regional rural economic development efforts. REA will strongly encourage Borrowers operating revolving loan funds to collaborate with existing organizations involved in rural development activities, and those organizations are urged to work with REA Borrowers in facilitating rural development projects. This collaboration and assistance could include performing local or regional studies to identify area economic development needs, assisting community leaders and other project owners in planning and implementing projects, loan packaging, technical assistance to REA Borrowers in reviewing loan applications and administering the revolving loan fund, and coordinating efforts between other entities, including public and private lending institutions, that provide assistance and/or funding to rural development projects. REA also encourages state Rural Development Councils to become active participants in planning rural development projects and coordinating activities between local governments, economic development districts, REA Borrowers and other entities operating RLFs. However, although collaboration between REA Borrowers and other enitities is strongly encouraged, legislation requires that REA Borrowers retain the ultimate decision-making authority and responsibility for REA rural development loan and grant funds.

Regarding possible competition between REA Borrowers and other lenders, it should be emphasized that REA does not intend for REA Borrowers to compete with or replace existing services of RLFs, or other public or private lenders, but merely to augment or supplement those sources of funds. To clarify this policy, and ensure effective implementation, § 1703.22(b) has been revised to require Borrowers, within their RLF rural development plan, to document coordination of lending activities with local organizations operating RLFs and other area lenders. The rule requires such documentation to indicate that Borrowers will not compete with, but will supplement other legal sources of financing. Rural development plan documentation which complies with REA policy will be stipulated in RLF agreements between Borrowers and REA.

Some commenters expressed concern that the administrative burden for operating RLFs would be too great and REA Borrowers may choose not to participate. REA has minimized administrative requirements; thus the burden should be no greater for the RLFs than for zero-interest loans. Although the REA Borrowers will decide whether or not to establish RLFs, REA believes the potential of significant benefits to rural residents through the RLF provisions will encourage participation.

There were a number of recommendations concerning purposes eligible for funding, including comments that REA should make grant funds available for businesses in a for-profit status. REA believes there is adequate flexibility with the rule as written regarding eligible projects. The quality of the proposal and the degree of benefit to the rural community or the potential for economic development are determining factors in application approval. It should be noted that rural for-profit and non-profit projects alike may be able to obtain grant funds in conjunction with zero-interest loans for feasibility studies and technical assistance. In addition, for-profit as well as non-profit entities that enhance the overall quality of medical care or provide advanced telecommunications services or computer networks for medical and educational services may be considered for grants because they may facilitate projects which will improve the rural communities overall and provide needed services to rural America. However, generally, REA desires to fund non-profit entities, since grants to for-profit entities for direct business start-up costs could result in the possibility or perception that grants would provide certain for-profit entities an unfair competitive advantage over those entities not receiving REA funding.

It was also suggested that housing be included as eligible for funding under the regulation. REA recognizes the value of adequate housing in developing rural areas. However, REA believes other federal programs are available to provide housing, and grant funds will be better utilized to provide broader community-wide facilities and infrastructure improvements. REA Borrowers may, in accordance with a rural development plan for a revolving loan fund, provide housing assistance from those funds classified as non-Federal.

Further, it was suggested that grant funds be used for venture capital purposes. The focus of the rural economic development loan and grant program is to allow REA Borrowers to assist projects that will promote rural development. REA intends to be flexible in meeting this objective; thus, applications will be evaluated on a case by case basis.

There were several objections to linking grants to zero-interest loans. Some comments urged direct grants for feasibility studies and technical assistance be provided to non-profit entities and that grants be made outright, without loans, to economically distressed local governments. REA feels that grants for feasibility studies or technical assistance will most likely be effectively used in conjunction with loans. Grants in conjunction with loans strengthen the loan program and maximize the benefits derived from the limited amount of grant funding available. No change is being made to allow direct grants to economically distressed local governments; however, provisions of the program as written will enable REA Borrowers to facilitate economic development in distressed rural areas by funding worthwhile community development and job creation projects.

Two commenters suggested that the 10 percent limitation for using grant funds for administrative costs of the RLFs be revised to provide more flexibility in determining these costs. No change is being made to the program

at this time. REA feels that limiting the funds used for administrative costs will be an incentive to encourage REA Borrowers to stress prudent management of the funds and maximize the benefits for rural development. REA encourages interested rural development organizations to work with REA Borrowers to minimize overhead costs.

Some commenters felt REA's grant funding limitation of 80 percent of the cost of establishing the revolving fund, which will require 20 percent supplemental funding to the revolving loan fund by the Borrower, is overly restrictive. These organizations stated that this Borrower supplemental funding requirement, and the supplemental funding requirement for individual projects, was too burdensome. Additionally, commentors objected to requiring projects be funded by REA Borrowers "up-front." This requirement was set forth in the proposed rule's preamble paragraph entitled "The establishment and/or Operation of a Revolving Loan Fund by REA Borrowers", § 1703.22(a)(3) relating to supplemental funding requirements, and § 1703.22(h)(2), "Requisition requirements", which requires Borrowers be reimbursed 80 percent of funds expended for approved projects. REA believes the supplemental funding requirement should remain applicable for Borrowers establishing revolving loan funds, as well as supplemental funding for individual projects presently required for zero-interest pass-through loans. REA has found that the supplemental funding requirement specified in § 1703.23 of the regulation, as applied to individual projects, has been beneficial for the zero-interest loan program by maximizing the use of outside funds. Likewise, REA believes the Borrower supplemental funding requirement for the revolving loan fund will be equally beneficial for the grant selection process by evidencing a degree of Borrower support and commitment to the revolving loan fund, and it will provide REA adequate assurance of effective project review and oversight resulting in projects having a high probability of success.

However, REA recognizes that reimbursing Borrowers only 80 percent of funds expended "up front" for community development projects, in order to achieve Borrowers' 20 percent required contribution to RLFs, may place an undue financial burden upon some Borrowers and discourage program participation. In addition, REA recognizes that requiring Borrowers to initially exhaust their financial resources, as well as the REA grant funds, will result in no available funds for Borrowers' revolving funds during the first year or two of operation until payments from the funded community development projects are received. Therefore, REA has modified the proposed rule in § 1703.22(h)(2), "Requisition requirements", to remove the 80 percent reimbursement provision and allow for full reimbursement of Borrowers' expended funds for approved projects funded. However, consistent with the supplemental funding requirements for individual projects, as well as revolving loan funds set forth in the proposed rule, Borrowers' supplemental funding requirements to the revolving loan fund will be maintained. Accordingly, paragraph (a)(5) in § 1703.22 of the final rule has been added to require REA Borrowers establishing RLFs to submit a commitment, in the form of a board resolution, to provide supplemental funding, referred to as "additional funding" in an amount no less than 20 percent of the REA grant approved. The Borrower will be required to provide documentation that the additional funding has been deposited in the appropriate account in § 1703.22(h)(1) of this final rule prior to grant disbursement. This paragraph also reiterates the requirement in § 1703.22(g)(2) in the proposed rule requiring additional funding be retained within the revolving loan fund. Additional funding for revolving loan funds may be retained initially as non-Federal funds for any rural economic development project(s), subject to the normal requirements outlined in § 1703.22(g). For example, for a $400,000 revolving loan fund grant from REA, the Borrower may requisition 100 percent of REA's portion of eligible project costs. However, the REA Borrower will commit at least $80,000 (20 percent of $400,000) of additional funds to be used for rural economic development projects in accordance with an approved rural development plan for non-Federal funds. Since the Borrower's funds provided as additional funds may be considered non-Federal monies and not subject to "Federal monies" restrictions for the Rural Economic Loan and Grant Program as outlined in the regulation, the REA Borrower can retain a worthwhile degree of flexibility to fund projects during the first year of the revolving loan fund. It should be noted, however, that as with pass-through zero-interest loans and grants, projects funded with Federal grant funds under the revolving loan provision will be subject to the supplemental funding requirements as outlined in § 1703.23 of the Rural Economic Loan and Grant Program regulation. As pointed out in the comments, REA recognizes that many projects may have limited sources of supplemental funding available. In this regard, therefore, REA has provided a provision in § 1703.22(a)(5), whereby Borrowers, with prior approval from REA, may use all or a portion of their additional funding to assist project owners receiving funding through the revolving loan provisions to meet their supplemental funding requirements required by § 1703.23. In this case, such additional funding will be considered as Federal funds and subject to the requirements and restrictions of the regulation.

Finally, several technical changes have been made to the proposed regulation for clarification as follows: (1) Section 1703.21(d) has been revised to clarify that excess interest returned to REA will not be used to reduce principal indebtedness. (2) For revolving loan funds, § 1703.22(a)(4) has been revised to clarify that reasonable servicing fees may be charged regardless of whether Federal or non-Federal funds are involved. (3) Section 1703.20(a)(8) has been revised to clarify that the overall restriction for using zero-interest loan and grant funds for payment of Borrower salaries is subject to the operating expense allowance for revolving loan funds. (4) Section 1703.22(h)(1) has been revised to add to the accounting requirements, additional ledger accounts to record interest income. (5) Section 1703.22(g)(2) has been clarified to require Borrowers to retain interest earned from non-Federal funds within the revolving fund to be used in accordance with their approved Rural Development Plan and Scope of Work Plan. (6) Section 1703.22(g)(3) has been revised to require REA Borrowers that terminate the revolving loan program without obtaining approval by the REA Administrator to return the amount of the original grant to REA. (7) Section 1703.22(h)(2) has been revised to delete the requirement for account ledgers to be submitted as a prerequisite for requisitioning grant funds for revolving loan funds. (8) Section 1703.66(g) has been revised to require REA Borrowers to include in their legal documents the requirement for project owners to provide sufficient financial, accounting and budget information and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016 for non-profit entities, and REA rural economic development loan reviews for projects in a for-profit status.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for 7 CFR part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 et seq. and 950aaa et seq.

Subpart B—Rural Economic Development Loan and Grant Program

2. In § 1703.12 of this subpart B, the following definitions are added in alphabetical order to read as follows:

§ 1703.12 Definitions.

* * * * *

Revolving loan program—a program established and operated by the Borrower, using grant funds, the Borrower's contribution and loan repayments to make loans to businesses or others for rural economic development and job creation purposes.

RTB—the Rural Telephone Bank, established as a body corporate and an instrumentality of the United States, to obtain supplemental funds from non-Federal sources and utilize them in making loans, for the purposes of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of telephone lines, facilities, or systems, for REA Borrowers financed under sections 201 and 408 of the Act.

* * * * *

Rural economic development—job creation or preservation or community facilities improvement projects in rural areas.

* * * * *

Scope of work—a detailed plan, which has been approved by the Administrator, covering the work to be performed by the loan and/or grant recipient using the loan and/or grant funds.

* * * * *

Technical assistance—analysis of facilities or processes, managerial, financial and operational consultation by independent qualified entities to assist project owners to identify and evaluate problems or potential problems and provide training to enable project owners to successfully implement, manage, operate and maintain viable projects.

* * * * *

3. Paragraph (c) of § 1703.17 is added to read as follows:

§ 1703.17 Uses of zero-interest loans and grants.

* * * * *

(c) Zero-interest loans and grants may be used for Projects that enhance rural economic development by providing advanced telecommunications services and computer networks for medical and educational services, as follows: (1) For telecommunications end use and/or transmission facilities; and (2) Other portions of the project, such as modifications to buildings necessary to accommodate telecommunications equipment for medical care and other services, public or private education, and employment training.

4. Sections 1703.18 and 1703.19 are added to read as follows:

§ 1703.18 Types of projects eligible for grant funding.

Grants may be made for the following purposes:

(a) The establishment and operation of a revolving loan program by Borrowers in accordance with § 1703.22;

(b) Project feasibility studies to assist for-profit and non-profit entities in conjunction with a loan for an authorized project. Feasibility studies will include management assistance, consultation, and research for planning individual projects that the Borrower has determined will benefit the rural community. Feasibility studies which may be financed under this section must be performed by qualified entities subject to § 1703.19(i), General requirements for grant funding. Feasibility studies must address the important aspects of project assessment and planning to ensure, to the extent practicable, the success of projects. These include the market, technical, economic, financial, and managerial issues related to project feasibility. Feasibility studies may be funded in connection with viable projects as a reimbursement to the project owner for expenses incurred during the initial planning stages of the project prior to project funding by REA;

(c) The acquisition of technical assistance in conjunction with projects funded with zero-interest loans to enable for-profit and non-profit entities to obtain analysis of facilities and processes, managerial, financial and operational consultation. Grant funds may also be used in conjunction with zero-interest loans to enable non-profit business incubators to provide technical assistance. Technical assistance will enable project owners to identify and evaluate problems or potential problems and provide training in order that they may ultimately implement, manage, operate and maintain viable projects which are financed with zero-interest loan funds. Technical assistance financed under this section must be performed by qualified entities which are independent of the project owner subject to § 1703.19(i), General requirements for grant funding;

(d) Business incubators established by non-profit organizations to assist in developing emerging enterprises. Business incubators funded in conjunction with zero-interest loans will include those facilities in which single or multiple businesses may use premises, support staff, computer software, hardware, telecommunications equipment, machinery, janitorial services, utilities, or other overhead facilities. Grant funding may also be provided to allow business incubators to provide feasibility studies and technical assistance in accordance with paragraphs (b) and (c) of this section;

(e) Community development assistance to non-profit entities and public bodies for employment creation projects, or other projects which provide needed community facilities and services;

(f) Facilities and equipment to public, for-profit and non-profit entities to provide education and training to rural residents to facilitate economic development. Equipment and facilities may be funded to enable rural businesses to provide educational and job enhancement skills to employees;

(g) Facilities and equipment to public, for-profit and non-profit entities to provide medical care to rural residents. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

(h) Projects which utilize advanced telecommunications and/or computer networks to facilitate medical or educational services or job training in accordance with paragraphs (f) and (g) of this section.

§ 1703.19 General requirements for grant funding.

(a) Grants made under § 1703.18(a), establishment and operation of a revolving loan program by Borrowers, will be limited to Borrowers and can be made without zero-interest loans. Grants made under § 1703.18 (b) through (h) will be made only in conjunction with zero-interest loans, and on a pass-through basis.

(b) Pass-through grant funding for projects under § 1703.18 (b), (c), (f), (g) and (h) will be available for non-profit and for-profit entities. Pass-through grant funding for projects under § 1703.18 (d) and (e) will be available only for non-profit entities.

(c) All projects funded with zero-interest loans and grants will require supplemental funding in accordance with § 1703.23. For grants made under § 1703.18(a), the portion eligible for REA funding may be fully funded with grant funds. For all other grants funded under 1703.18, the portion of project costs eligible for REA funding may be funded up to 20 percent with grant funds.

(d) Grant funding will be provided only to the extent necessary for a feasible project. A feasible project is a project which expects to generate sufficient income to pay operating expenses and debts and compensate for depreciation of equipment and facilities for the project which is to be funded by REA. Depreciation must be based on allowable depreciation schedules as set forth by the United States Internal Revenue Service. Borrowers whose analyses of projects show feasibility without grant funds should not apply for grant funding. Borrowers requesting pass-through grant funds will base grant funding requests on borrower projected income and expense projections for the project, and documentation regarding depreciation of the equipment and facilities for the project. The Administrator will determine whether the Borrower's projections of income, expenses and depreciation are reasonable.

(e) For projects that project insufficient operating revenue the first two years to show feasibility, borrowers should first consider the deferral provisions set forth in § 1703.29(b) before determining the appropriate level of requested grant funding. Zero-interest loan and grant funding will be approved in accordance with paragraph (d) of this section based on the option which results in the lowest required grant percentage.

(f) The owner of the pass-through project that receives grant funds will be encouraged to commit that the project will be a demonstration project.

(g) Borrowers or project owners must demonstrate the availability and commitment of other sources of funding needed to complete a project in addition to REA loan and/or grant funds, prior to the first advance of REA funds.

(h) Feasibility studies and/or technical assistance funded with grants under § 1703.18 (b) and (c) must be performed by entities which are independent of the Borrower and qualified to provide such services. The project owner, if deemed qualified in accordance with this paragraph, may furnish a feasibility study under § 1703.18(b). Entities furnishing technical assistance under § 1703.18(c), must be independent of the project owner. To be deemed qualified, entities providing feasibility studies and/or technical assistance must:

(1) Provide sufficient documentation evidencing their proven ability, background and experience to furnish such services; and

(2) Provide sufficient documentation evidencing their legal authority and capacity to furnish such services.

5. Section 1703.20 is revised to read as follows:

§ 1703.20 Ineligible uses of zero-interest loans and grants.

(a) Zero-interest loans and grants must not be used:

(1) To fund or assist projects of which any director, officer, general manager or significant stockholder of the Borrower, or close relative thereof, is an owner, stockholder, partner or director, or which would, in the judgment of the Administrator, create a conflict of interest or the appearance of a conflict of interest. The Borrower must disclose to the Administrator information regarding any conflict of interest, potential conflict of interest or any appearance of a conflict of interest. The Administrator will determine whether there is a conflict of interest or whether any potential conflict of interest or appearance of a conflict of interest may adversely affect REA's interests. A Borrower organized as, or consisting of a cooperative, widely held mutual corporation, tribal government, municipal power corporation, public power district, or a similar widely held organization would ordinarily be able to have an ownership interest in or manage a project operated on either a for-profit or non-profit basis. A Borrower organized as a closely held, for-profit corporation with more than 5 percent of its stock held by one legal person, its subsidiary or an affiliate, would ordinarily be able to own or manage a project operated on a non-profit basis only;

(2) For any costs incurred on the project: (i) Prior to receipt of the Borrower's completed application by REA during an application period unless the Administrator has specifically approved such usage in writing; or

(ii) For site development, the destruction or alteration of buildings, or other activities that would adversely affect the environment or limit the choice of reasonable alternatives prior to satisfying the requirements of § 1703.32;

(3) By the Borrower to purchase or lease any real property, materials, equipment, or services from its subsidiary, an affiliate, or significant stockholders, officers, managers or directors of the Borrower, or close relatives thereof, where the purchase or lease has not been fully disclosed to the Administrator and received the Administrator's prior written approval;

(4) By the recipient of a pass-through-loan or pass-through-grant to purchase or lease any real property, materials, equipment, or services from the Borrower, its subsidiary, an affiliate of the Borrower, or significant stockholders, officers, managers or directors of the Borrower, or close relatives thereof, where the purchase or lease has not been fully disclosed to the Administrator and received the Administrator's prior written approval;

(5) To pay off or refinance existing indebtedness incurred prior to receipt of the Borrower's completed application by REA or for refinancing or repaying a loan made under the Act or a program administered by the Administrator;

(6) For any electric or telephone purpose, as determined by the Administrator;

(7) For the Borrower's electric or telephone operations or for any operations affiliated with the Borrower unless the Administrator has specifically informed the Borrower in writing that the operations are part of the approved purposes;

(8) To pay the salaries of any employee or owner of the Borrower, its subsidiaries, or affiliates. This restriction does not prohibit the use of loan or grant funds for printing and similar costs for project feasibility studies it has prepared, commissioned or purchased if specifically approved by the Administrator. This restriction is subject to the operating expense allowance for revolving loan funds set forth in § 1703.22 (a)(6);

(9) To fund feasibility studies and technical assistance as set forth in § 1703.18 independently of projects which are funded under the zero-interest loan and grant program;

(10) For proposed projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); or

(11) For anything other than an approved purpose.

(b) [Reserved]

6. Section 1703.21 is amended by adding a sentence at the end of paragraph (b) and revising paragraph (d) to read as follows:

§ 1703.21 Limitations on the use of zero-interest loan and grant funds.

* * * * *

(b) * * * Grant funds will be disbursed to the Borrower in accordance with § 1703.61(b).

* * * * *

(d) The Borrower may not requisition zero-interest loan funds unless those funds are deposited into the Borrower's REA construction fund trustee account. The Borrower will be required to set up a separate Federally insured account called the Rural Economic Development Account, if loan funds are not expected to be disbursed within two months after receipt from REA. All interest earned on temporarily deposited zero-interest loan funds in excess of $500 per 12-month period must be used for approved purposes or returned to REA. Interest earned in excess of $500 per 12 month period and returned to REA will not be used to reduce the Borrower's principal indebtedness. Grant funds will be disbursed by REA in accordance with 7 CFR parts 3015 and 3016, and § 1703.61 (b).

* * * * *

7. Section 1703.22 is added to read as follows:

§ 1703.22 Revolving loan program.

Grant funds under this section will be provided only to REA Borrowers on a non pass-through basis. REA Borrowers will, in turn, provide loans to foster rural economic development in accordance with this subpart and the specific requirements of this section.

(a) *General.* Grant funds disbursed to REA Borrowers to establish revolving loan programs under this section are subject to the following requirements:

(1) The uses, restrictions and limitations for zero-interest loans set forth in §§ 1703.17, 1703.20 and 1703.21 respectively;

(2) Loans made by REA Borrowers initially lending grant funds disbursed by REA are limited to types of projects specified in § 1703.18 (d), (e), (f), (g) and (h). Loans may also be made for feasibility studies and technical assistance in accordance with § 1703.18 (b) and (c), respectively, but only for those types of projects specified in this paragraph (a)(2). Loans made from repayments of the initial loans made by REA Borrowers may be used for any rural economic development purpose in accordance with a prior agreement between the Borrower and REA;

(3) All other requirements relevant to zero-interest pass-through loans and grants outlined in this subpart, except the minimum size of a zero-interest loan as specified in § 1703.28(f);

(4) The initial loans made from the revolving loan fund using the grant funds must carry an interest rate of zero percent; however, loans made from repayments of the initial loan may carry an interest rate in accordance with prior agreement with REA. In either case, the Borrower may charge reasonable loan servicing fees;

(5) The Borrower will provide a board resolution certifying a commitment to provide and maintain additional funding to the revolving loan fund in an amount no less than 20 percent of the REA grant approved. The Borrower will provide documentation that the additional funding has been deposited in the appropriate account in § 1703.22(h)(1) prior to grant disbursement. This requirement does not pertain to supplemental funding requirements for individual projects as set forth in § 1703.23. Additional funding required in this paragraph pertains only to borrowers establishing revolving loan funds, with the following provisions: (i) Use of additional funding is subject to requirements set forth in paragraph (b) of this section and with REA concurrence;

(ii) Individual projects funded under this section are subject to supplemental funds requirements set forth in § 1703.23;

(iii) At the Borrower's option with REA concurrence, all or a portion of the additional funding may be used to assist project owners receiving funding from Federal grant funds under this section to meet their supplemental funding requirements set forth in § 1703.23 of this subpart. Such additional funding will be deemed as Federal funds and accounted for in accordance with paragraph (h)(1)(i)(A) of this section for electric borrowers or paragraph (h)(1)(ii)(A) of this section for telephone borrowers, as appropriate;

(iv) At the Borrower's option, all or a portion of the additional funding may be retained as non-Federal funds, for any rural economic development project(s), subject to paragraph (g) of this section and REA concurrence. Additional funding committed as non-Federal will be accounted for in accordance with paragraph (h)(1)(i)(E) of this section for electric borrowers or paragraph (h)(1)(ii)(E) of this section for telephone borrowers, as appropriate;

(6) Grant funds will only be provided to an REA Borrower for a revolving loan program when a proposed budget submitted to REA demonstrates and the Borrower agrees in writing that no more than 10 percent of grant funds received are used to cover operating expenses of the revolving loan program. Operating expenses include the costs of administering the revolving loan fund and the provision of technical assistance to project owners. All proceeds in excess of those needed to cover authorized expenses, as described above, must revert to the revolving fund and be available for re-lending for eligible projects. Budgets which reflect expenses incurred in operating the fund must be submitted to REA annually;

(7) The Borrower may charge reasonable loan servicing charges. For purposes of this section, loan servicing charges must not exceed an amount equal to the sum of one percent per year of the outstanding principal on the first day of each year on each project owner's zero-interest loan which is made from the REA grant proceeds;

(8) The Borrower will submit documentation indicating that potential projects which are eligible for funding have sufficiently progressed in the planning stage to allow grant funding approved for a revolving loan program to be requisitioned by the Borrower, disbursed by REA, and loaned to recipients within 3 years of the date of grant approval by REA. Grant funds that have not been requisitioned within 3 years will be cancelled, unless the Administrator has approved an extension in writing. Grant funds will be disbursed by REA in accordance with paragraphs (d) and (g) of this section,

(9) If the revolving loan program is terminated, further disbursement of grant funds will be cancelled. Repayments of loans made using grant funds which have been disbursed will be used in accordance with the Borrower's rural development plan;

(10) Payment of creditors which provide interim or construction financing to a viable project for eligible purposes as set forth in § 1703.17 of this subpart may be authorized. Refinancing for the sole purpose of replacing higher interest conventional financing with zero-interest revolving loan funds is not authorized.

(b) *The Borrower's rural development plan.* REA requires that the revolving loan program be administered in accordance with a rural development plan, developed by the Borrower and approved by REA. The plan must be of sufficient detail to provide REA with a complete understanding of what the Borrower intends to accomplish by administering a revolving loan program. The rural development plan will provide the mechanics of how the revolving loan funds will be disbursed to the project owner. The rural development plan must outline the Borrower's plans for administering the revolving loan program, during the initial period when REA grant funds are

lent by the Borrower and after the revolving fund becomes non-Federal in accordance with paragraph (g) of this section. The plan must outline the following: (1) Specific objectives for the revolving loan program, revolving loan operating procedures, lending parameters, maximum and minimum loan amount, and types of projects to be funded;

(2) Documentation of Borrower's coordination of lending activities with other local entities that provide financing for rural economic development projects. Such documentation will indicate that the Borrower will not compete with, but supplement other sources of legal financing;

(3) Eligibility criteria if other than outlined in this subpart;

(4) The application process and method of disposition of the funds to the project owner; and

(5) A procedure for monitoring the project owner's accomplishments and reporting requirements by the project owner's management.

(c) *The Borrower's scope of work.* Borrowers applying for grant funding under this section must submit a scope of work to REA. Applications for grants under this section will be evaluated for funding based on the Borrower's rural development plan in paragraph (b) of this section and the scope of work. The scope of work must contain the following items: (1) Documented need for grant funds. The Borrower must identify a sufficient number of rural development projects of the type specified in § 1703.18 (d), (e), (f), (g), and (h) which are currently being planned requiring zero-interest loans equal to the amount of grant assistance requested from REA. These projects may be supported with a community facilities plan, or other development plan, prepared by local community leaders in cooperation with the Borrower. For each project, the Borrower will submit information required under § 1703.34;

(2) Documented authority and ability of the Borrower to administer a revolving rural development loan program in accordance with the provisions of this subpart. The Borrower must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience;

(3) Documented ability of the Borrower to commit financial resources under the control of the Borrower to assist in the establishment of a rural development revolving loan program. This should include a statement of the sources of funding for the administration of the Borrower's operations, as well as financial and technical assistance for projects;

(4) Documentation that the Borrower has secured commitments of significant financial support from public agencies and/or private organizations for supplemental funding to support a rural development loan program;

(5) A list of proposed fees and other charges the Borrower will assess the projects it funds; and

(6) The Borrower's rural development policy for non-Federal funds in accordance with paragraphs (b) and (g) of this section.

(d) *Grant processing and approval.* Applications for grants to establish revolving loan funds will be reviewed in accordance with §§ 1703.45 and 1703.46, and with the Borrower's rural development plan and scope of work outlined in paragraphs (b) and (c) of this section. Grants will be processed in accordance with §§ 1703.58 and 1703.59.

(e) *Disbursement of grant funds.* Borrowers are not authorized to commence projects to be funded under this section until those projects have been submitted for authorization in accordance with paragraph (c)(1) of this section, or the projects have been submitted for authorization subsequent to grant approval in accordance with paragraph (e)(2) of this section. REA grant funds will be disbursed in accordance with the provisions of 7 CFR part 3015, Uniform Federal Assistance Regulations, on a reimbursement basis, the applicable requirements of this subpart, the administrative provisions outlined in paragraph (g) of this section, and the following requirements:

(1) Only projects authorized by REA in accordance with paragraphs (c)(1) and (e)(2) of this section, for which adequate documentation, including receipts for expenditures and certification of approved purposes, are submitted will be considered for reimbursement;

(2) A project which was not submitted prior to grant approval in accordance with paragraph (c)(1) of this section, may be authorized for funding subsequent to grant approval. A project which is authorized for funding under this paragraph will be considered for disbursement at the first allowable time period after project authorization in accordance with paragraphs (e)(3) and (e)(4) of this section. Project authorization after grant approval is subject to the following requirements: (i) The project meets the specific objectives for the Borrower's revolving loan program as outlined in paragraph (b)(1) of this section;

(ii) The Borrower presents evidence that the project requested for authorization can be funded prior to projects which were authorized prior to grant approval in accordance with paragraph (b)(1) of this section; and

(iii) REA approves the project for funding in accordance with § 1703.34;

(3) Grant funds requisitioned for individual projects in increments of less than $100,000, or less than 25 percent of the amount approved for the revolving loan fund, whichever is less, may be reimbursed semi-annually. Submission periods for requisitioning grant funds on a semi-annual disbursement basis will be 14 days commencing from the 6-month anniversary date of grant approval;

(4) Grant funds requisitioned for individual projects in increments of $100,000 or greater, or at least 25 percent of the amount approved for the revolving loan fund, whichever is less, may be submitted for reimbursement at any time.

(f) *Reporting requirements.* (1) The Borrower must maintain financial management systems and retain financial records in accordance with 7 CFR part 3015, Uniform Federal Assistance Regulations.

(2) Borrower records must include an accurate accounting and source documentation to support each transaction involving the revolving loan fund. Records are subject to a rural economic loan review as set forth in § 1703.66(g).

(3) SF–269, "Financial Status Report," and a revolving loan program activity report will be required of all Borrowers on an annual basis. Reports will be submitted no later than 90 days after December 31 of each year. The program activity report will contain an aggregate list of projects funded, the amount funded for each project, the project repayment schedule, a brief description of each project, the project objectives, whether or not the project has been completed, and the projected number of jobs created or saved by each project. Reports under this paragraph will be required until all grant funds have been disbursed and projects completed.

(4) A performance report will be required for each project funded on an annual basis. Performance reports will be due no later than 90 days after December 31 of each year. Performance reports will be submitted until one year after project completion. Project performance reports will contain the following: (i) A comparison of actual accomplishments during the reporting period to the objectives established for the project and, if not attained, reasons

why established objectives were not met;

(ii) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated to resolve the situation;

(iii) Projected accomplishments for the next reporting period, if applicable; and

(iv) Status of compliance with any special conditions for project funding, if applicable.

(5) Borrowers must report and remit interest earned on advances of grant funds deposited in interest accounts to REA on a quarterly basis in accordance with 7 CFR part 3015, Uniform Federal Assistance Regulations.

(g) *Non-Federal funds.* Once all REA-derived grant funds have been utilized by the Borrower to fund rural development projects according to the provisions of this section and the applicable provisions of this subpart, loans made by the Borrower thereafter from repayments to the revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on the Borrower or project owners. However, the Borrower will, as a condition for receiving a grant under this section, agree to the following conditions: (1) To maintain a revolving loan account to promote rural economic development in accordance with the Borrower's rural development plan for non-Federal funds submitted in accordance with paragraph (b) of this section;

(2) To maintain the additional funding supplied by the Borrower in accordance with paragraph (a)(5) of this section and interest earnings within the revolving loan fund;

(3) Approval may be granted by the Administrator to terminate the revolving loan program, or modify the requirements set forth in paragraphs (g)(1) and (g)(2) of this section, upon written request and justification by the Borrower. Should the Borrower terminate the revolving loan program without obtaining approval by the REA Administrator, the Borrower will return the amount of the original grant to REA.

(h) *Administrative provisions.* The requirements of this paragraph set forth the procedures for accounting, requisitioning and disbursement of Federal funds, those funds initially disbursed for projects which may be funded in accordance with an approved rural development plan and scope of work submitted by the Borrower. Disbursement of grant funds will be approved on a reimbursement basis after the grant agreement is executed by REA and the Borrower, the applicable provisions of this subpart are met, subject to disbursement restrictions in paragraph (e) of this section, and the requirements in paragraphs (h) (1) through (3) of this section.

(1) *Accounting requirements.* Accounting will be performed in accordance with 7 CFR part 1767, Accounting Requirements for REA Electric Borrowers, or 7 CFR part 1770, Accounting Requirements for REA Telephone Borrowers, as appropriate. The Borrower will maintain accounts for the revolving funds as follows:

(i) *REA electric Borrowers.* (A) A general ledger Account 131.13, "Cash-General—Economic Development Grant Funds." The Borrower will debit this account in an amount equal to the amount of the grant received from REA, any additional funds deemed Federal from the Borrower as required by paragraph (a)(5)(iii) of this section, and all other funds advanced for the project, regardless of the source, if controlled by the Borrower. The Borrower will credit this account for all expenditures made with Federal funds on behalf of the rural development project.

(B) A general ledger Account 124.1, "Other Investments—Federal Economic Development Loans." The Borrower will debit this account in the amount of Federal funds the Borrower advances to non-associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.13 in paragraph (h)(1)(i)(A) of this section. This account will be credited with repayments of loans made with Federal economic development grant funds.

(C) A general ledger Account 123.3, "Investment in Associated Companies—Federal Economic Development Loans." The Borrower will debit this account in the amount of Federal funds the Borrower advances to associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.13 in paragraph (h)(1)(i)(A) of this section. This account will be credited with repayments of loans made with Federal economic development grant funds.

(D) Account 421, "Miscellaneous Non-operating Income." The Borrower will credit this account in the amount of grant funds disbursed by REA resulting from an approved requisition request in accordance with paragraph (h)(2) of this section.

(E) A general ledger Account 131.14, "Cash-General—Economic Development Non-Federal Revolving Funds." The Borrower will debit this account with any additional funds deemed non-Federal from the borrower as required by paragraph (a)(5)(iv) of this section, cash received from the repayment of loans made from accounts in paragraphs (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(i)(F), and (h)(1)(i)(G) of this section. The Borrower will credit this account to reflect loans made for rural economic development projects from non-Federal funds from accounts specified in paragraphs (h)(1)(i)(F) and (h)(1)(i)(G) of this section.

(F) A general ledger Account 124.2, "Other Investments—Non-Federal Economic Development Loans." The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to non-associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.14, in paragraph (h)(1)(i)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(G) A general ledger Account 123.4, "Investment in Associated Companies—Non-Federal Economic Development Loans." The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.14, in paragraph (h)(1)(i)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(H) A general ledger Account 171 "Interest and Dividends Receivable." The Borrower will debit this account with the amount of interest earned on the revolving loan fund. The Borrower will credit this account and debit the appropriate cash account when the cash is received.

(I) A general ledger Account 419, "Interest and Dividend Income." The Borrower will credit this account with the amount of interest earned on the revolving loan fund.

(ii) *REA telephone Borrowers.* (A) A general ledger Account 1130.4, "Cash—General Fund—Economic Development Grant Funds (Class A Companies)", or Account 1120.14, "Cash-General Fund—Economic Development Grant Funds (Class B Companies)." The

Borrower will debit the appropriate account in an amount equal to the amount of the grant received from REA, any additional funds deemed Federal from the Borrower required by paragraph (a)(5)(iii) of this section, and all other funds advanced for the project, regardless of the source, if controlled by the Borrower. The Borrower will credit the appropriate account for all expenditures made with Federal funds on behalf of the rural development project.

(B) A general ledger Account 1402.4, "Other Investments in Nonaffiliated Companies—Federal Economic Development Grant Loans." The Borrower will debit this account in the amount of Federal funds the Borrower advances to nonaffiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(A) of this section. This account will be credited with repayments of loans made from Federal economic development grant funds.

(C) A general ledger Account 1401.1, "Other Investments in Affiliated Companies—Federal Economic Development Grant Loans." The Borrower will debit this account in the amount of Federal funds the Borrower advances to affiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(A) of this section. This account will be credited with repayments of loans made from Federal economic development grant funds.

(D) Account 7360, "Other Non-operating Income (Class A Companies)", or Account 7300, Non-operating Income and Expense (Class B Companies), as appropriate. The Borrower will credit these accounts, as appropriate, in the amount of grant funds disbursed by REA resulting from an approved requisition request in accordance with paragraph (h)(2) of this section.

(E) A general ledger Account 1130.5, "Cash—General Fund—Economic Development Non-Federal Revolving Funds (Class A Companies)", or Account 1120.15, "Cash—General Fund—Economic Development Non-Federal Revolving Funds (Class B Companies)", as appropriate. The Borrower will debit the appropriate account with any additional funds deemed non-Federal from the Borrower as required by paragraph (a)(5) of this section, cash received from the repayment of loans made from accounts in paragraphs (h)(1)(ii)(B), (h)(1)(ii)(C), (h)(1)(ii)(F), and (h)(1)(ii)(G) of this section. The Borrower will credit the appropriate account to reflect loans made for rural economic development projects from non-Federal funds from accounts specified in paragraphs (h)(1)(ii)(F) and (h)(1)(ii)(G) of this section.

(F) A general ledger Account 1402.5, "Other Investments in Nonaffiliated Companies-Non-Federal Economic Development Grant Loans." The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to nonaffiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(G) A general ledger Account 1401.2, "Other Investments in Affiliated Companies—Non-Federal Economic Development Grant Loans." The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to affiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(H) A general ledger Account 1210, "Interest and Dividends Receivable." The Borrower will debit this account with the amount of interest earned on the revolving fund loan. The borrower will credit this account and debit the appropriate cash account when the cash is received.

(I) A general ledger Account 7320, "Interest Income (Class A Companies)", or Account 7300.2, "Interest Income (Class B Companies)", as appropriate. The Borrower will credit this account with the amount of interest earned on the revolving fund loans.

(2) *Requisition requirements.* Grant funds may be requisitioned by REA Borrowers in accordance with disbursement requirements in paragraph (e) of this section. Borrowers will be fully reimbursed for funds expended for approved projects funded. For each completed project, the Borrower will submit the following for reimbursement:

(i) Standard Form 270, "Request for Advance of Reimbursement";

(ii) Copies of cancelled checks and other verifiable source records supporting the transactions; and

(iii) Certification and evidence that the project costs to be reimbursed are for a project which has been authorized by REA and are authorized costs for that project.

(3) *REA review.* Requisition requests will be evaluated for compliance with loan purposes previously submitted by the Borrower for project authorization in accordance with paragraphs (c)(1) or (e)(2) of this section, compliance with the Borrower's rural development plan, accounting documentation submitted in paragraph (h)(1) of this section, and the cancelled checks and source records submitted.

8. Paragraph (b) of § 1703.28 is revised to read as follows:

§ 1703.28 Maximum and minimum sizes of a zero-interest loan or grant application.

* * * * *

(b) Regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000.

* * * * *

9. Section 1703.30 is amended by revising the parenthetical containing the OMB control number at the end of the section to read as follows:

§ 1703.30 Approval of agreements.

* * * * *

(Approved by the Office of Management and Budget under control number 0572–090090)

10. Section 1703.34 is amended by revising paragraphs (b)(5) (ii) and (iii), and adding paragraphs (b)(5) (iv) and (v) to read as follows:

§ 1703.34 Applications.

* * * * *

(b) * * *

(5) * * *

(ii) A section entitled "Project Description" as set forth in § 1703.36;

(iii) Except for applications for project feasibility studies, a section entitled "Environmental Impact of the Project" as set forth in § 1703.37;

(iv) Monitoring plan. For a pass-through loan and/or grant, a copy of the Borrower's plan to monitor the loan and/or grant and ensure that the requirements of this subpart are met; and

(v) Scope of work. For an application for a loan and/or grant, a proposed scope of work for the project.

* * * * *

11. Section 1703.46 is amended by revising the first sentence of paragraph (a); by removing paragraph (e), and redesignating paragraphs (f), (g), (h), (i), (j), (k), and (l) as paragraphs (e), (f), (g), (h), (i), (j), and (k), respectively; and by adding a sentence at the end of newly

designated paragraph (g)(6)(iv) to read as follows:

§ 1703.46 Documenting the evaluation and selection of applications for zero-interest loans and grants.

(a) The Administrator will only consider for selection applications that request funds for purposes as set forth in § 1703.17 and § 1703.18 and are not ineligible under § 1703.20, as determined by the Administrator. * * *

* * * * *

(g) * * *

(6) * * *

(iv) * * * For a pass-through loan and grant, the quality of the Borrower's plan to monitor the loan and grant and assure that the requirements of this subpart and 7 CFR parts 3015 and 3016 are met will also be considered.

* * * * *

12. Section 1703.61 is amended by adding two sentences at the end of paragraph (a) and three sentences at the end of paragraph (b) to read as follows:

§ 1703.61 Disbursement of zero-interest loan and grant funds.

(a) * * * The Borrower or project owner's share in the cost of the project must be utilized in advance of REA zero-interest loan funds, or upon REA approval, on a pro-rata distribution basis with loan funds during the disbursement period. The Borrower or project owner will not be permitted to provide its contribution at the end of the loan disbursement period.

(b) * * * Prior to the disbursement of grant funds under this subpart, the Borrower will provide evidence of fidelity bond coverage as required by 7 CFR 3015.17. The grant portion of a pass-through zero-interest loan and grant will be disbursed to the Borrower on a reimbursement basis after all other project funds have been utilized and evidence is provided that the project has been completed. Grants to Borrowers for establishment of revolving loan funds will be disbursed in accordance with § 1703.22 of this subpart.

* * * * *

13. Section 1703.66 is amended by revising paragraphs (b), (d), (e) and (g), and by adding paragraphs (h), (i), and (j), to read as follows:

§ 1703.66 Review and other requirements.

* * * * *

(b) The Borrower must require the recipient of a pass-through loan and grant to provide an itemized list to the Borrower that shows the expenditures made on the project for approved purposes, including a certification to that effect. The Borrower will also require the recipient to attach invoices, receipts, bills of sale, and other evidence representing the items on the list of expenditures that at least total the amount of the REA zero-interest loan and grant. In addition, the Borrower will also require the recipient to furnish a record of itemized receipts showing total project costs in such detail that will permit auditors to establish the REA funding percentage. REA's legal agreements will include the terms and conditions that the Borrower must require in its agreement with the recipient of a pass-through loan and grant covering the use and intended schedule of expenditures of the loan funds.

* * * * *

(d) The legal documents executed between the Borrower and the Administrator in connection with a zero-interest loan and/or grant must contain certain provisions giving the Administrator discretionary rights and remedies in the event a Borrower fails to comply with this subpart, other Federal regulations and statutes, or the terms, conditions and requirements of the executed legal documents. Regardless of any right or remedy the Administrator chooses to assert, if the Borrower uses any zero-interest loan and/or grant funds other than for approved purposes, the Borrower will be required to return to REA the amount used for unapproved purposes. An unauthorized zero-interest loan amount which is returned will be considered a prepayment on the REA note.

(e) Borrowers receiving zero-interest loans and/or grants will be subject to a rural economic development review of zero-interest loan and grant funds.

* * * * *

(g) Grants provided under this program will be administered in accordance with 7 CFR part 3015 and 7 CFR part 3016, as appropriate. Copies of these USDA Uniform Assistance regulations can be obtained by contacting REA in Washington, DC. A Borrower that receives a grant for the establishment of a revolving loan fund, or project owner that receives a pass-through loan and grant, will be subject to requirements under these regulations which cover, among other things, financial reporting, accounting records, budget controls, record retention and audit requirements. For pass-through loans and grants, REA Borrowers will be required to include in their legal documents the requirement for project owners to provide sufficient financial, accounting and budget information and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016 for non-profit entities, and REA rural economic development loan reviews for projects in a for-profit status.

(h) For pass-through loans and grants awarded under this subpart, the Borrower must diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The Borrower must submit an original and one copy of each report to REA on an annual basis. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why any established objectives were not met;

(3) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(i) For pass-through loans and grants, a final project performance report will be required with the last SF 269, "Financial Status Report," available from REA in Washington, DC. The final report also must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last annual report.

(j) Monitoring requirements for Borrowers receiving grants for revolving loan funds are specified in § 1703.22.

14. Sections 1703.67 and 1703.68 are added to read as follows:

§ 1703.67 Changes in project objective or scope.

For loans and grants awarded under this subpart, the Borrower must obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain prior approval of changes can result in suspension or termination of grant funds.

§ 1703.68 Loan and grant termination provisions.

(a) *Termination for cause.* The Administrator may terminate any loan and/or grant in whole, or in part, at any time before the date of completion of

loan and/or grant disbursement, whenever the Borrower has failed to comply with the conditions of the loan and/or grant. The Administrator will promptly notify the Borrower in writing of the determination and the reasons for the termination, together with the effective date. The termination date will be no less than 30 days following receipt of the termination notice. The Borrower will have such time to cure the default, or to state why it feels the loan and/or grant should not be terminated. The Administrator will stay the termination upon the curing of the default, and may delay termination if, sufficient cause has been given by the Borrower.

(b) *Termination for convenience.* The Administrator or the Borrower may terminate a loan and/or grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The Borrower will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Administrator will allow full credit to the Borrower for the Federal share of unfulfilled contractual obligations which were incurred in good faith by the Borrower prior to grant termination.

Subpart C—[Amended]

§§ 1703.80–1703.99 [Reserved]

15. Sections 1703.80 through 1703.99, which are presently reserved in subpart B, are transferred to subpart C.

Dated: March 7, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–5740 Filed 3–11–94, 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–132–AD; Amendment 39–8854; AD 94–06–06]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires certain maximum brake wear limits to be incorporated into the FAA-approved maintenance inspection program. This amendment also requires that the Airplane Flight Manual be revised to include certain procedures concerning operations in the event of a rejected takeoff (RTO). This amendment is prompted by an accident in which a transport category airplane executed an RTO and was unable to stop on the runway due to worn brakes; and the subsequent review of allowable brake wear limits for all transport category airplanes. The actions specified by this AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

EFFECTIVE DATE: April 13, 1994.

ADDRESSES: Information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: 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: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on November 1, 1993 (58 FR 58307). That action proposed to require that certain maximum brake wear limits be incorporated into the FAA-approved maintenance inspection program; and that the Airplane Flight Manual (AFM) be revised to include certain procedures concerning operations in the event of a rejected takeoff (RTO).

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

One commenter supports the proposal.

Another commenter, the Air Transport Association (ATA) of America, questions the need for the proposed AD. This commenter is aware of the FAA's efforts to review and determine allowable aircraft brake wear limits, since those efforts prompted the issuance of a series of AD's, applicable to U.S.-manufactured airplanes, to mandate maximum brake wear limits. While those U.S.-manufactured airplanes were certified to new brake criteria, the commenter points out that airplanes such as the Fokker Model F28 Mark 0100, which were certified under the Joint Airworthiness Regulations (JAR) criteria, are certified to worn brake standards. In light of this, the commenter questions why the FAA indicated that the proposed AD was prompted by the 1988 accident involving worn brakes on a McDonnell Douglas Model DC–10 airplane. This commenter states that U.S. operators of Fokker Model F28 Mark 0100 series airplanes, at the time of airplane delivery, implemented within their maintenance programs the same worn brake criteria as proposed in the notice; additionally, these operators' FAA-approved AFM's already reflect this criteria. Therefore, this commenter argues that there is no basis for adopting the proposed rule unless it can be shown that U.S. operators cannot safely administer to certified brake wear criteria within their approved maintenance programs.

The FAA does not concur with this commenter's suggestion that this AD action is not appropriate. The accident involving the Model DC–10 was the primary reason prompting this AD and the previously-issued AD's to mandate specific maximum brake wear limits on transport category airplane. During the process of promulgating those AD's, the FAA became aware that not all operators were following the manufacturer's recommended brake wear limits. For example, in one case, three different operators of the same model of airplane were found to be observing three different maximum brake wear limits. Further, the FAA is aware that, until recently, not all manufacturers had provided brake wear limits that met the FAA criteria, e.g., landing distance predicated upon single engine-out, maximum takeoff weight, and fully worn brakes. The purpose of this AD is in no way an attempt to question the ability of U.S. operators to safely administer to brake wear limits criteria; its purpose is to establish what those brake wear limits are.

Several commenters request that the proposed rule be revised to eliminate the requirement to replace the landing gear sliding member after an RTO event One of these commenters suggests that, instead of requiring replacement, the proposed rule could require inspections of the sliding member, using procedures that are currently included in the Fokker F28 Mark 0100 Aircraft Maintenance Manual (AMM) 05–51–01

This commenter states that similar inspection procedures exist for most other commercial aircraft, and those procedures have proven to be a safe and effective method of evaluating landing gears for the effects of high brake heat. This commenter also suggests that additional procedures could include inspection of the axles for evidence of discolored or peeling paint with cadmium plating that is blistered, wrinkled, or mottled (signs of cadmium melting and resolidifying). Cadmium melts at 610 °F, which is very close to the tempering temperature of ultra-high strength steels; therefore, if the cadmium is not melted, it is unlikely that any heat damage has been done to the steel sliding member axle. This commenter notes that this criteria has been used for other aircraft, and this commenter plans to contact Fokker to request that this type of inspection criteria be added to the Fokker F28 Mark 0100 AMM. Further, another commenter states that, on other aircraft models in its fleet, it regularly performs a visual inspection of the pistons following an RTO to determine the amount of heat that the piston has been subjected to; the degree of discoloration of the paint on the axle and the amount of damage to the hydraulic hoses are evidence of the amount of heat. This commenter also plans to contact Fokker to request the inclusion of this inspection in the AMM.

The FAA does not concur with the suggestion to revise the proposed rule, at least at this time. The FAA has queried Fokker directly about the inspection procedures suggested by these commenters; however, Fokker was not aware of any effective nondestructive inspection technique that can be used to establish whether cadmium embrittlement has taken place on the axle after an RTO. Fokker did indicate that it is currently working with the manufacturer of the brakes to devise a way to limit the exposure of the sliding member to heat from the brakes, which in turn would limit the need to replace the sliding member. Once an inspection or other procedure is developed that would preclude the necessity of replacing the sliding member, the FAA would consider further rulemaking on this issue. In the meantime, under the provisions of paragraph (d) of the final rule, the FAA would consider requests for the use of alternative methods of complying with this rule, provided sufficient data are presented to justify such requests.

One commenter requests that the proposed entry in the maintenance program (as specified in paragraph (b) of the proposal) and the proposed entry in the AFM (as specified in paragraph (c) of the proposal) be revised. This commenter states that calculations have shown that only when "flap 0" is selected, there is a possibility to reach an energy level that can cause the axle to overheat. Therefore, those entries should include a statement that, during the RTO scenario, the flaps would have to be at 0 degrees. The commenter suggests that the wording of both entries be changed to read as follows:

"*If flap 0 is selected*, and if a takeoff is rejected at a speed greater than 90 percent of * * *"

The FAA concurs and has revised paragraphs (b) and (c) of the final rule accordingly.

This same commenter suggests that the AFM entry proposed in paragraph (c) be reworded to include language that is more familiar to pilots, who will be the primary users of this information in the Limitations Section. Specifically, the commenter suggests that pilots would be more familiar with the term "V_1" (takeoff decision speed) than with "V_{MBE}" (maximum brake energy limit speed). The commenter states that use of V_1 as a reference is more appropriate than V_{MBE} in this context, as well, since it is more conservative with respect to the axle overheat problem. Along this same line, the commenter suggests that the AFM wording be revised to indicate that "the rejected takeoff conditions should be reported to maintenance personnel prior to the next takeoff" and that "further dispatch may be affected." The FAA concurs with all of these suggestions and has revised paragraph (c) of the final rule accordingly.

Note: If a pilot were to report a rejected takeoff event to maintenance personnel and refer the V_1 speed involved, maintenance personnel can recalculate the V_1 figure to a V_{MBE} figure by means of a graph incorporated into the AMM.

This commenter also suggests that proposed paragraph (b) be revised to specify the part numbers of the main landing gears (MLG) equipped with the sliding members that need to be replaced. Adding a reference to the MLG part numbers would avoid any relationship between the currently-installed Dowty MLG's and other brands of MLG's that are expected to be certified and installed in the near future. The FAA concurs with this suggestion and has revised paragraph (b) of the final rule accordingly.

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

The FAA estimates that 83 airplanes of U.S. registry and 2 U.S. operators will be affected by this AD.

Although the rule requires the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, no other specific additional action, inspection, or part replacement costs relative to that requirement are involved; such actions are currently a part of the normal maintenance program. However, it is estimated that it will require 20 work hours, at an average labor rate of $55 per work hour, for each operator to incorporate the brake wear limitations into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of that requirement on U.S. operators is estimated to be $2,200, or $1,100 per operator.

Additionally, the FAA estimates that it will take approximately 1 work hour per airplane to accomplish the required AFM revision, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of that requirement on U.S. operators is estimated to be $4,565, or $55 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules

Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94-06-06 Fokker: Amendment 39-8854. Docket 93-NM-132-AD.

Applicability: Model F28 Mark 0100 series airplanes, equipped with brake part numbers (P/N) identified in paragraph (a) of this AD, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of brake effectiveness during a rejected takeoff, accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Incorporate the maximum brake wear limits specified in the following tables into the FAA-approved maintenance inspection program and comply with these measurements thereafter.

TABLE 1.—BRAKE MANUFACTURER: AIRCRAFT BRAKING SYSTEMS CORP. (ABS)

Brake P/N	Maximum settings—Non refurbished brakes	
	Maximum wear pin measurement (inch/mm)	Alternate wear measurement (inch/mm)
5008132-2	1.85" (47 mm)	4.00" (101.6 mm)
5008132-3	1.85" (47 mm)	4.00" (101.6 mm)
5008132-4	2.10" (53.3 mm)	4.25" (107.9 mm)
5008132-5	2.10" (53.3 mm)	4.25" (107.9 mm)
5008132-6	2.10" (53.3 mm)	4.25" (107.9 mm)
5008132-7	2.10" (53.3 mm)	4.25" (107.9 mm)

Note 1: Measuring instructions for non refurbished brakes can be found in the ABS Component Maintenance Manual with Illustrated Parts List AP-652 (Fokker Manual No. 32-43-77) or in ABS Service Bulletin Fo100-32-35. ABS Service Bulletin Fo100-32-35 does not contain measurement information relative to brake P/Ns 5008132-2 and -3.

TABLE 2

Brake P/N	Maximum settings—Refurbished brakes	
	Maximum wearpin measurement (inch/mm)	Alternate wear measurement (inch/mm)
5008132-2	1.85" (47 mm)	4.00" (101.6 mm)
5008132-3	1.85" (47 mm)	4.00" (101.6 mm)
5008132-4	2.20" (55.9 mm)	4.35" (110.5 mm)
5008132-5	2.20" (55.9 mm)	4.35" (110.5 mm)
5008132-6	2.20" (55.9 mm)	4.35" (110.5 mm)
5008132-7	2.20" (55.9 mm)	4.35" (110.5 mm)

Note 2: Refurbished brakes will have "R11-3" etched on the brake housing adjacent to the shuttle valve.

Note 3: Measuring instructions for refurbished brakes can be found in the ABS Component Maintenance Manual with Illustrated Parts List AP-652 (Fokker Manual No. 32-43-77) or in ABS Service Bulletin Fo100-32-38.

(2) Any brake using a heat stack kit with an "R" after the P/N must use the wear pin length specified on the Airworthiness Tag that accompanies each heat stack kit, and must not use the "Alternate Wear Measurement" noted in Table 1 of this AD under "Non-Refurbished Brakes" to determine the brake's maximum wear limit. Any of these brakes that are worn more than the maximum wear limit must be replaced, prior to further flight, with a brake that is within the limits specified in Table 2 of this AD.

(b) Within 180 days after the effective date of this AD, incorporate the following information into the FAA-approved maintenance program:

"If flap 0 is selected; and if a takeoff is rejected at a speed greater than 90 percent of the scheduled Maximum Brake Energy limit speed (V_{MBE}) for the applicable weight, altitude, temperature, wind conditions, runway slope and brake configuration (if applicable); and if any brake is worn to 90 percent or more of its brake wear limit: The main landing gear sliding member (identified with one of the following main landing gear part numbers: 201072011, 201072012, 201072013, 201072014, 201072015, or 201072016) should be replaced with a serviceable sliding member in accordance with Fokker Aircraft Maintenance Manual, section 32-11-08.

Note: Only the sliding member with a brake that is more than 90 percent worn has to be replaced."

(c) Within 180 days after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM, by adding the following information. This may be accomplished by inserting a copy of this AD in the AFM.

"If flap 0 is selected, and if a takeoff is rejected at a speed greater than 90 percent of the scheduled takeoff decision speed (V_1) for the applicable weight, altitude, temperature, wind conditions, runway slope, and brake configuration (if applicable), as specified in the FAA-approved AFM, report the rejected takeoff conditions to maintenance prior to next takeoff. Dispatch may be affected."

(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 4: 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 Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on April 13, 1994.

Issued in Renton, Washington, on March 7, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5700 Filed 3–11–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–ANE–09; Amendment 39–8853; AD 94–06–05]

Airworthiness Directives; Hamilton Standard 14RF Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hamilton Standard 14RF series propellers. This action adopts new torquing procedures for the propeller hub retaining nuts, requires initial and repetitive torque checks of propeller hub retaining nuts using those new procedures. In addition, this AD requires repetitive visual inspections for external propeller oil, investigation, and removal from service of propellers hubs found cracked or with undetermined leakage. This amendment is prompted by reports of cracks in propeller hubs that initiate in hub dowel pin holes at the connection of the hub to the engine flange. The actions specified in this AD are intended to prevent propeller hub cracking and loss of engine oil, and possible loss of a propeller blade or hub.

DATES: Effective March 29, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 29, 1994.

Comments for inclusion in the Rules Docket must be received on or before May 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–09, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Francis X. Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of cracks found in some Hamilton Standard Model 14RF–9, 14RF–19, and 14RF–21 propeller hubs. Through testing and field investigation the FAA has determined that insufficient torque of the propeller hub retaining nuts has resulted in damage by fretting within the dowel holes and subsequent cracks initiating in the hub dowel pin holes at the connection of the hub to the engine flange. The FAA has also determined that the present torquing procedures for propeller hub retaining nuts on this model propeller are insufficient to control fretting during the conditions experienced in service. Therefore, through engineering analysis, the FAA has determined that new, more stringent torquing procedures must be applied to this propeller model to mitigate this fretting condition. Cracks that may be caused by this condition can be detected by oil leakage not explained by other conditions such as leaks in the blade seal, the pressure relief valve, or actuator assembly. Since undetermined oil leakage is a good indication of cracks in the propeller hub, the FAA has also determined that propellers hubs with unexplained oil leakage must be removed from service and inspected for cracks prior to return to service. This fretting condition, if not corrected, could result in propeller hub cracking and loss of engine oil, and possible loss of a propeller blade or hub.

The FAA has reviewed and approved the technical contents of Temporary Revision (TR) No. 61–6, dated March 15, 1993, and TR No. 61–7, dated July 27, 1993, to Hamilton Standard Maintenance Manual (MM) P5186, applicable to Model 14RF–9 propellers; TR No. 61–6, dated April 8, 1993, and TR No. 61–7, dated July 27, 1993, to Hamilton Standard MM P5199, applicable to Model 14RF–19 propellers; and TR No. 61–4, dated March 15, 1993, and TR No. 61–5, dated July 27, 1993, to Hamilton Standard MM P5189, applicable to Model 14RF–21 propellers. These TR's describe the new torquing procedures for torque checks of propeller hub retaining nuts, and procedures for inspecting propeller hubs for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other Hamilton Standard 14RF series propellers of the same type design, this AD is being issued to prevent propeller hub cracking and loss of engine oil, and possible loss of a propeller blade or hub. This AD requires an initial torque check of the propeller hub retaining nuts within 30 days after the effective date of this AD, the implementation of a new, more stringent hub retaining nut tightening procedure, and repetitive torque checks of the hub retaining nuts. If the torque checks of the hub retaining nuts do not meet the acceptance critieria of the applicable TR's during the initial or subsequent repetitive checks, then the propeller hub must be removed from service and inspected for cracks prior to return to service. Propeller hubs with crack indications must be removed from service and replaced with a serviceable propeller hub prior to further flight. The FAA's analysis indicates that 30 days will be sufficient to schedule the torque checks without adversely affecting flight safety.

Subsequent to an acceptable initial torque check and the implementation of the new hub retaining nut tightening procedure, this AD requires a one-time entry in the propeller maintenance records that the new tightening procedure was incorporated. In addition, all future propeller installations should follow the new installation and hub retaining nut tightening procedure.

The AD will thereafter require repetitive torque checks at intervals not to exceed 500 hours time in service since the last inspection. In addition, this AD requires repetitive visual inspections for external propeller oil, investigation, and removal from service

of propellers hubs found cracked or with undetermined leakage. These inspections must be performed at intervals not to exceed 70 hours time in service (TIS) since the last inspection, or at line checks, whichever occurs first. If the leakage is found to be caused by other than a leak in the blade seal, the pressure relief valve, or actuator assembly, the leakage may be due to a propeller hub crack and the propeller must be removed from service and replaced with a serviceable propeller prior to further flight. The actions would be required to be accomplished in accordance with the applicable TR's to the MM's described previously.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–09." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–06–05 Hamilton Standard: Amendment 39–8853. Docket 94–ANE–09.

Applicability: Hamilton Standard Model 14RF–9, 14RF–19, and 14RF–21 propellers, installed on but not limited to Embraer EMB–120 series, Construcciones Aeronauticas, SA (CASA) CN–235 series, and SAAB–SCANIA SF340 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller hub cracking and loss of engine oil, and possible loss of a propeller blade or hub, accomplish the following:

(a) Within 30 days after the effective date of this airworthiness directive (AD), perform an initial torque check of the propeller hub retaining nuts, as follows:

(1) For Hamilton Standard Model 14RF–9 propellers, in accordance with Temporary Revision (TR) No. 61–6, dated March 15, 1993, to Hamilton Standard Maintenance Manual (MM) P5186.

(2) For Hamilton Standard Model 14RF–19 propellers, in accordance with TR No. 61–6, dated April 8, 1993, to Hamilton Standard MM P5199.

(3) For Hamilton Standard Model 14RF–21 propellers, in accordance with TR No. 61–4, dated March 15, 1993, to Hamilton Standard MM P5189.

(b) If propeller hub retaining nuts are found not to meet the acceptance criteria in accordance with the applicable TR to the Hamilton Standard MM's during the initial torque check in accordance with paragraph (a), and during the repetitive torque checks performed in accordance with paragraph (e) of this AD, remove the propeller hub from service and inspect for cracks in accordance with the applicable TR's listed in paragraph (a) of this AD. Remove propeller hubs with crack indications and replace with serviceable propeller hubs prior to further flight.

(c) If the initial propeller hub retaining nut torque check is acceptable in accordance with the applicable TR listed in paragraph (a) of this AD, support the propeller with an appropriate lifting fixture and loosen all the propeller hub retaining nuts. Tighten the propeller hub retaining nuts as follows:

(1) For Hamilton Standard Model 14RF–9 propellers, in accordance with TR No. 61–7, dated July 27, 1993, to Hamilton Standard MM P5186.

(2) For Hamilton Standard Model 14RF–19 propellers, in accordance with TR No. 61–7, dated July 27, 1993, to Hamilton Standard MM P5199.

(3) For Hamilton Standard Model 14RF–21 propellers, in accordance with TR No. 61–5, dated July 27, 1993, to Hamilton Standard MM P5189.

(d) Make a one-time entry into propeller maintenance records to record:

(1) That the initial torque check was performed;

(2) The propeller hub retaining nuts were loosened and tightened in accordance with paragraph (c) of this AD; and

(3) The torque values.

(e) Thereafter, perform repetitive torque checks at intervals not to exceed 500 hours time in service since the last inspection, in accordance with the applicable TR to the Hamilton Standard MM's listed in paragraph (a) of this AD.

(f) Install all propellers after the effective date of this AD using the propeller hub retaining nut tightening procedure defined in the applicable TR to the Hamilton Standard MM's listed in paragraph (c) of this AD. Record the torque values in accordance with paragraph (d) of this AD.

(g) Visually inspect and investigate all external propeller oil leakage at the next line

check, or within 70 hours TIS after the effective date of this AD, whichever occurs first. If the leakage is found to be caused by other than a leak in the blade seal, the pressure relief valve, or actuator assembly, the propeller must be removed from service and replaced with a serviceable propeller prior to further flight.

(h) Thereafter, visually inspect and investigate all external propeller oil leakage at intervals not to exceed 70 hours TIS since the last inspection, or at the next line check, whichever occurs first. If the leakage is found to be caused by other than a leak in the blade seal, the pressure relief valve, or actuator assembly, the propeller must be removed from service and replaced with a serviceable propeller prior to further flight.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

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

(k) The torque checks, retightening, and installation procedures shall be done in accordance with the following service documents:

Document No.	Pages	Date
TR No. 61–6 to Hamilton Standard MM P5186. Total pages: 8.	1–8	Mar. 15, 1993.
TR No. 61–7 to Hamilton Standard MM P5186. Total pages: 9.	1–9	July 27, 1993.
TR No. 61–6 to Hamilton Standard MM P5199. Total pages: 6.	1–6	Apr. 8, 1993.
TR No. 61–7 to Hamilton Standard MM P5199. Total pages: 7.	1–7	July 27, 1993.
TR No. 61–4 to Hamilton Standard MM P5189. Total pages: 8.	1–8	Mar. 15, 1993.
TR No. 61–5 to Hamilton Standard MM P5189. Total pages: 7.	1–7	July 27, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on March 29, 1994.

Issued in Burlington, Massachusetts, on March 7, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–5704 Filed 3–11–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 90C–0221]

Listing of Color Additives for Coloring Sutures; D&C Violet No. 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Violet No. 2 to color poly(ε-caprolactone) absorbable sutures for general surgery. This action responds to a petition filed by Concept, Inc.

DATES: Effective April 14, 1994, except as to any provisions that may be stayed by the filing of proper objections; written objections by April 13, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of August 6, 1990 (55 FR 31897), FDA announced that a color additive petition (CAP 0C0224) had been filed by Concept, Inc., 11311 Concept Blvd., Largo, FL 34643. The petition proposed that the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) be amended to provide for the safe use of D&C Violet No. 2 as a color additive in poly(ε-caprolactone) absorbable sutures for general surgery. Since the publication of the filing notice, Concept, Inc., has changed its name to Linvatec Corp. The petition was filed under section 706 (currently section 721) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376) (currently 21 U.S.C. 379e).

II. Regulatory History

The regulatory history of D&C Violet No. 2 is summarized in a final rule published in the **Federal Register** of May 7, 1990 (55 FR 18865). In the May 1990, final rule FDA permanently listed D&C Violet No. 2 for use in coloring polymethylmethacrylate intraocular lens haptics (§ 74.3602) in response to a color additive petition (CAP 9C0216). In that final rule, FDA also transferred the listings for the use of the color additive in sutures from § 74.1602 (21 CFR 74.1602) under Subpart B—Drugs to § 74.3602 under Subpart D—Medical Devices. Since the publication of the May 7, 1990, final rule, § 74.3602 has been amended to provide for the safe use of D&C Violet No. 2 as a color additive in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures.

III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes into direct contact with the body for a significant period of time (21 U.S.C. 379e(a)). D&C Violet No. 2 is added to the poly(ε-caprolactone) absorbable sutures in such a way that at least some of the color additive will come into contact with the body when the sutures are in place. In addition, the sutures are intended to be absorbed by the body, and during the absorption, the color additive will be deposited in body tissue. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

IV. The Color Additive

D&C Violet No. 2 is principally 1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 81–48–1). It is manufactured by either condensation of quinizarin with *p*-toluidine or by condensation of 1-hydroxy-halogenoanthroquinone with *p*-toluidine. Because no chemical

reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain residual amounts of the starting materials, including *p*-toluidine. This fact is significant because Weisburger et al. have demonstrated that *p*-toluidine is a carcinogen in mice (Ref. 1).

Residual amounts of reactants, such as *p*-toluidine and other manufacturing aids, are commonly found among the impurities of many color additives. The presence of such impurities is not unique to color additives. Numerous minor impurities are present in all chemical products, even in highly purified reagent-grade chemicals.

V. Determination of Safety

Under section 721(b)(4) of the act (21 U.S.C. 379e(b)(4)), the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless a fair evaluation of the data and information available to FDA establish that the color additive is safe for that use. FDA's color additive regulations (21 CFR 70.3(i)) define "safe" as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The anticancer or Delaney clause of the Color Additive Amendments (section 721(b)(5)(B) of the act) provides that a noningested color additive shall be deemed unsafe and shall not be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to induce cancer in man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to constituents of the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

VI. Safety of the Petitioned Use of the Additive

FDA estimates that the upper limit of lifetime exposure to D&C Violet No. 2 from its use in coloring poly(ε-caprolactone) absorbable sutures is 3.7 milligrams (mg) per person (0.15 micrograms (μg) per person per day). The agency calculated this upper limit of lifetime exposure based on several factors. First, the color additive will be used at a level of 0.1 percent by weight of the poly(ε-caprolactone) absorbable sutures. Second, the agency made four assumptions: (1) Five meters is the maximum total length of suture likely to be used in a single surgical operation, and 10 meters of suture would be used in multiple operations over a person's lifetime; (2) a lifespan of 70 years follows initial suture implantation; (3) a size 2 suture is used for general surgery; and (4) 100 percent of the color additive migrates from the suture into the body. Because these are conservative assumptions, the lifetime exposure to D&C Violet No. 2 from its use in coloring poly(ε-caprolactone) absorbable sutures is likely to be far less than 3.7 mg per person (0.15 μg per person per day).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing in this case. Although the agency does not normally require such testing, chronic studies supporting current listings for the use of D&C Violet No. 2 are available in the agency's files, and FDA's safety evaluation of the proposed use of the color additive in absorbable sutures included a consideration of these studies. Two-year carcinogenicity studies of dyed sutures implanted in rats and a lifetime skin-painting study in mice showed no indication of carcinogenicity. Additionally, teratology studies of sutures implanted in rats and rabbits exhibited no evidence of teratogenic effects.

In its evaluation of the safety of the proposed use of the subject additive, FDA has also considered other safety data submitted previously to support current listings for the use of D&C Violet No. 2. These toxicity studies of D&C Violet No. 2 included acute oral toxicity studies in rats and dogs, acute toxicity studies of dyed sutures and suture components in rats and mice, an evaluation of the tissue response to dyed sutures implanted intramuscularly in rats, a biological evaluation of dyed sutures implanted in rabbit's eyes, a study of the tissue reaction to the color additive injected into rabbit muscle, in vitro cytotoxicity studies, a pyrogenicity study of sutures, 7-month toxicity studies of implanted sutures in rats and dogs, a 119-day evaluation of dyed sutures implanted intramuscularly in rats, and six mutagenicity studies, including one *Salmonella*/reverse mutation test (Ames test) using extracts of dyed sutures, one study of chromosomal aberrations using dyed suture in Chinese hamster ovary cells, one study of in vitro transformation using dyed suture in Balb/c-3T3 cells, two mouse lymphoma forward mutation assays using dyed suture, and one mouse lymphoma toxicity assay of dyed suture.

In addition, FDA evaluated the toxicity studies that the petitioner provided to support the proposed use of D&C Violet No. 2 in poly(ε-caprolactone) absorbable sutures for general surgery. These studies included a hemolysis test by direct contact, a direct contact cytotoxicity test on mouse fibroblast cells using extracts of dyed sutures, a systemic toxicity test in mice using extracts of dyed sutures, a guinea pig sensitization maximization test using extracts of dyed sutures, a test of intracutaneous toxicity in rabbits using extracts of dyed sutures, implantation tests (7, 32, and 89 days, and 6 and 9 months) in rabbits, a *Salmonella*/mammalian mutagenicity test using extracts of dyed sutures, 52- and 32-week implantation tests in rats, and 60- and 62-day evaluations of absorbable suture following abdominal wound closure in rabbits.

There were no significant adverse effects from D&C Violet No. 2 in any of the studies evaluated by the agency. Therefore, the agency has concluded that these studies in conjunction with previously submitted studies establish the safety of the proposed use of D&C Violet No. 2 as a color additive in poly(ε-caprolactone) absorbable sutures.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data. The agency has also used risk assessment procedures to estimate the upper-bound limit of risk presented by *p*-toluidine, a carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of *p*-toluidine has two aspects: (1) Assessment of the exposure to the impurity from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. p-Toluidine

Using risk assessment procedures, FDA estimates that the maximum total lifetime exposure to *p*-toluidine that will result from the use of poly(ε-caprolactone) absorbable sutures colored with D&C Violet No. 2 that complies with the applicable specifications is 0.3 nanograms (ng) per person per day. The agency used data reported by the National Cancer Institute, which demonstrated that *p*-toluidine was carcinogenic for male and female Charles River CD-1 (HaM/ICR derived) mice, causing an increased incidence of hepatomas (liver tumors) (Ref. 1), to estimate the upper-bound

limit of lifetime human risk from exposure to this chemical stemming from the proposed use of D&C Violet No. 2 as a color additive in poly(ε-caprolactone) absorbable sutures (Ref. 3).

Based on a potential exposure of 0.3 ng per person per day, the upper-bound limit of individual lifetime risk from the potential exposure to *p*-toluidine from the proposed use of D&C Violet No. 2 as a color additive in poly(ε-caprolactone) absorbable sutures is $2x10^{-11}$, or 2 in 100 billion (Ref. 3). Because of the numerous conservatisms in the exposure estimate, actual lifetime-averaged individual exposure to *p*-toluidine is expected to be substantially less than the worst-case estimated daily exposure. Therefore, the actual risk would be less than $2x10^{-11}$. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to *p*-toluidine that might result from the proposed use of D&C Violet No. 2 for coloring poly(ε-caprolactone) absorbable sutures.

B. Specifications

D&C Violet No. 2 is currently produced as a certifiable color additive for use in externally applied drugs and cosmetics, in sutures, and in contact lenses in accordance with 21 CFR part 80. Based upon the low level of exposure to *p*-toluidine that results under the current specifications for D&C Violet No. 2 in § 74.1602, the agency concludes that the specifications listed in § 74.1602 are adequate to ensure the safe use of this color additive and to control the amount of *p*-toluidine that may exist as an impurity in the color additive when used in poly(ε-caprolactone) absorbable sutures.

VII. Conclusions

Based upon the available toxicity data and the other relevant considerations discussed above, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of D&C Violet No. 2 for coloring poly(ε-caprolactone) absorbable sutures when it is used at a level not to exceed 0.1 percent by weight of the suture material. The agency also concludes on the basis of available data that the color additive will perform its intended coloring effect in poly(ε-caprolactone) absorbable sutures and, thus, is suitable for this use. The agency, therefore, is amending § 74.3602 of the color additive regulations to provide for use of the color additive at a maximum level of 0.1 percent by weight in poly(ε-caprolactone) absorbable sutures.

VIII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IX. Environmental Impact

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

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Weisburger, E. K. et al., "Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-Term Toxicology or Carcinogenicity," *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology" in "Chemical Safety Regulation and Compliance," F. Homburger and J. K. Marquis, editors, S. Karger, New York, pp. 24–33, 1985.

3. Report of the Quantitative Risk Assessment Committee, "Upper Bound Lifetime Risk for *p*-Toluidine in D&C Violet No. 2 Used as a Color Additive for Poly(*epsilon*-Caprolactone) Absorbable Sutures CAP 0C0224 (Concept, Inc.)," July 30, 1991.

XI. Objections

Any person who will be adversely affected by this regulation may at any time on or before April 13, 1994 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 74.3602 is amended by adding new paragraph (b)(2)(iv) to read as follows:

§ 74.3602 D&C Violet No. 2.

* * * * *

(b) * * *

(2) * * *

(iv) At a level not to exceed 0.1 percent by weight of the suture material for coloring poly(ε-caprolactone) absorbable sutures for use in general surgery.

* * * * *

Dated: March 4, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–5788 Filed 3–11–94; 8:45 am]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL-4847-1]

Outer Continental Shelf Air Regulations; Delegation of Authority; Santa Barbara County, San Luis Obispo County, and Ventura County; Air Pollution Control Districts; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9, San Francisco has delegated authority to implement and enforce the requirements of the Outer Continental Shelf (OCS) program within 25 miles of the state's seaward boundary to the Santa Barbara County Air Pollution Control District (SBCAPCD), San Luis Obispo County Air Pollution Control District (SLOCAPCD), and Ventura County Air Pollution Control District (VCAPCD), California. EPA reviewed each District's rules and regulations and has found them to be adequate for delegation.

DATES: The effective date of the delegation authority for each agency is:

Santa Barbara County APCD—November 5, 1993

San Luis Obispo County APCD—January 18, 1994

Ventura County APCD—January 27, 1994

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region 9 office during normal business hours and at the following locations:

Santa Barbara County Air Pollution Control District 26 Castilian Drive B-23, Goleta, CA 93117.

San Luis Obispo County Air Pollution Control District 2156 Sierra Way, Suite B, San Luis Obispo, CA 93401.

Ventura County Air Pollution Control District 702 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking section (A-5-3), Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105. (415) 744-1197.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency has delegated the authority to implement and enforce the requirements of the OCS rule (40 CFR part 55) to the Santa Barbara County, San Luis Obispo County, and Ventura County Air Pollution Control Districts. The final OCS rule was promulgated by EPA on September 4, 1992 pursuant to section 328 of the Clean Air Act (the Act). (57 FR 40792).

Under section 328(a)(3) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources and each District's regulations have been reviewed by EPA and have been determined to be adequate. The following criteria for delegation are set forth at 40 CFR 55.11:[1] (1) The state has adopted the appropriate portions of 40 CFR part 55 into law; (2) The state has adequate authority under state law to implement and enforce the requirements of part 55; (3) The state has adequate resources to implement and enforce the requirements of part 55; and (4) The state has adequate administrative procedures to implement and enforce the requirements of part 55, including public notice and comment procedures.

The following delegation agreements represent the terms and conditions of the delegations to the SBCAPCD, SLOCAPCD, and VCAPCD:

I

U.S. EPA—Santa Barbara County APCD Agreement for Delegation of Authority for Outer Continental Shelf Air Regulations (40 CFR Part 55)

The undersigned, on behalf of the Santa Barbara County Air Pollution Control District ("SBCAPCD" or "the District") and the United States Environmental Protection Agency ("EPA"), hereby agree to the delegation of authority from EPA to SBCAPCD to implement and enforce the requirements of the Outer Continental Shelf Air Regulations ("OCS") (40 CFR part 55) within 25 miles of the state's seaward boundary, pursuant to section 328(a)(3) of the Clean Air Act ("the Act"), subject to the terms and conditions below. EPA has reviewed SBCAPCD's request for delegation and has found that SBCAPCD's regulations meet the requirements for delegation set forth at 40 CFR 55.11.

This delegation includes authority for the following sections of the Outer Continental Shelf Air Regulations:

Section	Title
55.1	Statutory authority and scope.
55.2	Definitions.
55.3	Applicability.
55.4	Requirements to submit a notice of intent.
55.6	Permit requirements.
55.7	Exemptions.
55.8	Monitoring, reporting, inspections, and compliance.
55.9	Enforcement.
55.10	Fees.
55.13	Federal requirements that apply to OCS sources.
55.14	Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries by state.

EPA is not delegating the authority to implement and enforce §§ 55.5 (Corresponding onshore area designation), 55.11 (Delegation), and 55.12 (Consistency updates), as authority for these sections is reserved to the Administrator.

Under section 328(a)(3) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources. For the OCS sources for which Santa Barbara County has been designated the corresponding onshore area (COA), the State has submitted SBCAPCD's regulations to EPA and requested that EPA delegate authority to SBCAPCD to implement and enforce the OCS air regulations. SBCAPCD's regulations have been reviewed by EPA and determined to be adequate for implementing and enforcing the delegable sections of 40 CFR part 55.

The OCS air regulations set forth the following criteria for delegation at 40 CFR 55.11:

(1) The state has adopted the appropriate portions of 40 CFR part 55 into state law—SBCAPCD adopted Rule 903, Outer Continental Shelf Air Regulations, on November 10, 1992. This rule incorporates the provisions of 40 CFR part 55 that EPA is delegating to the District.

(2) The state has adequate authority under state law to implement and enforce the requirements of part 55—According to a letter dated January 25, 1993 and forwarded to EPA from the State Attorney General, SBCAPCD has the authority to implement and enforce the requirements of part 55.

(3) The state has adequate resources to implement and enforce the requirements of part 55—SBCAPCD has submitted information documenting

[1] The term "state" as used in the delegation criteria refers to the local air pollution permitting agencies—SBCAPCD, SLOCAPCD, and VCAPCD.

that the District has adequate resources to implement and enforce the requirements of part 55.

(4) The state has adequate administrative procedures to implement and enforce the requirements of this part, including public notice and comment procedures—SBCAPCD's administrative procedures have been reviewed by EPA and found to be adequate. The following rules were submitted by SBCAPCD for review to meet this requirement:

Rule 101 Compliance By Existing Installations (Adopted 6/81)
Rule 208 Action on Applications—Time Limits (Adopted 10/18/71)
Rule 209 Appeals (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/5/91)
Rule 501 Hearing Boards—General (Adopted 10/23/78)
Rule 502 Hearing Boards—Filing (Adopted 10/23/78)
Rule 503 Hearing Boards—Contents of Filing (Adopted 10/23/78)
Rule 505 Breakdown Conditions (Adopted 10/23/78)
Rule 507 Appeal From Denial (Adopted 10/23/78)
Rule 508 Failure to Comply with Rules (Adopted 10/23/78)
Rule 601 Emergencies—General (Adopted 6/15/81)
Rule 602 Episodes/Disasters (Adopted 6/15/81)
Rule 604 Source Inspection (Adopted 6/15/81)
Rule 605 Enforcement (Adopted 6/15/81)
Rule 901 New Source Performance Standards (Adopted 4/21/92)
Rule 1001 National Emission Standards for Hazardous Air Pollutants (Adopted 5/14/91)
Rule 1101 Public Notification—General (Adopted 9/15/80)
Rule 1102 Daily Reporting of Air Quality (Adopted 9/15/80)
Rule 1103 Annual Reporting (Adopted 9/15/80)
Rule 1104 Health Effects (Adopted 9/15/80)
Rule 1105 Public Awareness and Involvement (Adopted 9/15/80)

Santa Barbara also submitted the following two (2) administrative rules:

Rule 504 Petitions for Variances: Contents (Adopted 10/23/78)
Rule 506 Emergency Variances (Adopted 10/23/78)

The District may use any administrative procedures it has under State law to implement and enforce the requirements of part 55, such as a variance. However, as stated in the preamble to part 55, as onshore, a variance will not shield a source from enforcement action by EPA.

Permits

Pursuant to § 55.6:

(1) SBCAPCD will require that the Applicant send a copy of any permit application required by 40 CFR 55.6 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the same time as the application is submitted to SBCAPCD.

(2) SBCAPCD shall send a copy of any public comment notice required under §§ 55.6, 55.13 or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) and the Minerals Management Service.

(3) SBCAPCD shall send a copy of any preliminary determination and any final permit action required under §§ 55.6, 55.13, or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(4) SBCAPCD shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager of that area.

(5) The District shall request EPA guidance on any matter involving the interpretation of section 328 of the Act or the delegated sections of the Outer Continental Shelf Air Regulations or 40 CFR part 55 to the extent that implementation, review, administration or enforcement of these provisions has not been covered by EPA determinations or guidance sent or communicated to the District.

(6) Pursuant to its authority under the Clean Air Act, EPA may review permits issued by the District under this agreement to ensure that the District's implementation of Rule 903 is consistent with the time frames and requirements of the federal regulations.

Exemptions

Pursuant to § 55.7:

(1) SBCAPCD shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U.S. Coast Guard, a copy of any permit application that includes an exemption request, or the request for exemption if no permit is required, within 5 days of its receipt.

(2) SBCAPCD shall consult with the Minerals Management Service of the U.S. Department of the Interior and the U.S. Coast Guard to determine whether the exemption under § 55.6(a)(2) will be granted or denied.

(3) If SBCAPCD, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the day the SBCAPCD received the exemption request, the request shall automatically be referred to the Administrator, who will process the referral in accordance with 40 CFR 55.7(f)(3). SBCAPCD shall transmit to the Administrator, within 91 days of its receipt, the exemption request and all materials submitted with the request, such as the permit application or the compliance plan, and any other information considered or developed during the consultation process.

(4) SBCAPCD will process exemption requests submitted with an approval to construct or permit to operate application in accordance with the procedures outlined in 40 CFR part 55.

Monitoring, Reporting, Inspections, and Compliance

SBCAPCD may use any authority it possesses under state law to require monitoring and reporting, and to conduct inspections. The Administrator or SBCAPCD shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or SBCAPCD to conduct unannounced inspections.

General Conditions

(1) SBCAPCD shall implement and enforce the Federal requirements of 40 CFR 55.13 as well as the applicable state and local requirements contained in 40 CFR 55.14.

(2) The primary responsibility for enforcement of the OCS air regulations delegated to the District shall rest with the SBCAPCD. This responsibility includes the District's implementation and enforcement of all the rules and regulations in part 55 specifically stated and interpreted by the District as being applicable to OCS sources, such as SBCAPCD's Rule 331 prohibiting routine venting of pollutants.

(3) Nothing in this agreement shall prohibit EPA from enforcing the OCS requirements of the Clean Air Act, the OCS air regulations, or the terms and conditions of any permit issued by the District pursuant to this agreement.

(4) In the event that the District does not enforce a provision of this delegation with respect to a source subject to the OCS air regulations, the District shall immediately notify the EPA Region 9 Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority.

(5) EPA shall retain authority to implement and enforce all requirements for OCS sources located beyond 25 miles from California's seaward boundaries.

(6) This delegation may be amended at any time by the formal written agreement of both the SBCAPCD and the U.S. EPA including amendments to add,

change, or remove conditions or terms of this agreement.

(7) If SBCAPCD adopts revisions to the District regulations reviewed by EPA and found to meet the requirements set forth at 40 CFR 55.11 for delegation, the parties may amend the agreement pursuant to condition 6 above, or EPA may take steps to revoke the delegation in whole or in part pursuant to condition 8 below. Any amendments to regulations submitted by the District to meet the requirements of 40 CFR 55.11 shall not be applied under this agreement until EPA has reviewed such amendments and determined that they are still adequate to implement and enforce the delegable portions of 40 CFR part 55.

(8) This delegation, after consultation with the SBCAPCD, may be revoked in whole or in part, if the U.S. EPA determines that the SBCAPCD no longer meet the requirements for delegation set forth at 40 CFR 55.11(b)(1–4). Any such revocation shall be effective as of the date specified in a Notice of Revocation to the SBCAPCD.

(9) This delegation of authority becomes effective upon the date of the signature of both parties to this Agreement.

(10) A notice of this delegated authority will be published in the **Federal Register**.

Dated: October 29, 1993.

James M. Ryerson,

Santa Barbara County Air Pollution Control District.

Dated: October 29, 1993.

William W. Master,

Santa Barbara County Air Pollution Control District.

Dated: November 5, 1993.

Felicia Marcus,

U.S. Environmental Protection Agency.

Dated: November 8, 1993.

David Howekamp,

U.S. Environmental Protection Agency.

II

U. S. EPA—San Luis Obispo County APCD Agreement for Delegation of Authority for Outer Continental Shelf Air Regulations (40 CFR Part 55)

The undersigned, on behalf of the San Luis Obispo County Air Pollution Control District ("SLOCAPCD" or "the District") and the United States Environmental Protection Agency ("EPA"), hereby agree to the delegation of authority from EPA to SLOCAPCD to implement and enforce the requirements of the Outer Continental Shelf Air Regulations ("OCS") (40 CFR part 55) within 25 miles of the state's seaward boundary, pursuant to section 328(a)(3) of the Clean Air Act ("the Act"), subject to the terms and conditions below. EPA has reviewed SLOCAPCD's request for delegation and has found that SLOCAPCD's regulations meet the requirements for delegation set forth at 40 CFR 55.11. This delegation includes authority for the following sections of the Outer Continental Shelf Air Regulations:

Section	Title
55.1	Statutory authority and scope.
55.2	Definitions.
55.3	Applicability.
55.4	Requirements to submit a notice of intent.
55.6	Permit requirements.
55.7	Exemptions.
55.8	Monitoring, reporting, inspections, and compliance.
55.9	Enforcement.
55.10	Fees.
55.13	Federal requirements that apply to OCS sources.
55.14	Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries by state.

EPA is not delegating the authority to implement and enforce §§ 55.5 (Corresponding onshore area designation), 55.11 (Delegation), and 55.12 (Consistency updates), as authority for these sections is reserved to the Administrator. In addition, SLOCAPCD does not have SIP-approved Prevention of Significant Deterioration ("PSD") regulations, nor has it received delegation of authority from EPA for implementation and enforcement of the federal PSD program. Therefore, EPA shall retain authority for the PSD provisions of part C of the Act and the regulations promulgated thereunder at 40 CFR 52.21.

Under section 328(a)(3) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources. For the OCS sources for which the San Luis Obispo County has been designated the corresponding onshore area (COA), the State has submitted SLOCAPCD's regulations to EPA and requested that EPA delegate to SLOCAPCD authority to implement and enforce the OCS air regulations. SLOCAPCD's regulations have been reviewed by EPA and determined to be adequate for implementing and enforcing the delegable sections of 40 CFR part 55.

The OCS air regulations set forth the following criteria for delegation at 40 CFR 55.11:

(1) The state has adopted the appropriate portions of 40 CFR part 55 into state law—SLOCAPCD adopted Rule 215, Outer Continental Shelf Air Regulations, on November 17, 1992. This rule incorporates the provisions of 40 CFR part 55 that EPA is delegating to the District. (NOTE: Section 55.5, corresponding onshore area designations, was adopted by SLOCAPCD but EPA will not delegate authority for this section, as provided by § 55.11(a)).

(2) The state has adequate authority under state law to implement and enforce the requirements of part 55—According to a letter dated January 25, 1993 and forwarded to EPA from the State Attorney General, SLOCAPCD has the authority to implement and enforce the requirements of part 55.

(3) The state has adequate resources to implement and enforce the requirements of part 55—SLOCAPCD has submitted information documenting that the District has adequate resources to implement and enforce the requirements of part 55.

(4) The state has adequate administrative procedures to implement and enforce the requirements of this part, including public notice and comment procedures—SLOCAPCD's administrative procedures have been reviewed by EPA and found to be adequate. The following rules were submitted by SLOCAPCD for review to meet this requirement:

Rule 110 Enforcement (Adopted 8/2/76)
Rule 111 Arrests and Notices to Appear (Adopted 8/2/76)
Rule 112 Public Availability of Information (Adopted 12/6/76)
Rule 202 Permits (Adopted 11/5/91) (except A.4 and A.8)
Rule 204 New Source Review Requirements B.3. (Adopted 8/10/93)
Rule 205 Action on Applications (Adopted 11/5/91)
Rule 206 Conditional Approval (Adopted 11/5/91)
Rule 210 Periodic Inspection (Adopted 11/5/91)
Rule 211 Emission Banking (Adopted 8/10/93)
Rule 212 Community Bank (Adopted 8/10/93)
Rule 213 Calculations (Sec. F.) (Adopted 8/10/93)
Rule 214 Notification (Adopted 8/10/93)
Rule 302 Schedule of Fees (Adopted 9/15/92)

The District may use any administrative procedures it has under State law to implement and enforce the requirements of part 55, such as a variance. However, as stated in the

preamble to part 55, as onshore, a variance will not shield a source from enforcement action by EPA.

Permits

Pursuant to § 55.6:

(1) SLOCAPCD will require that the Applicant send a copy of any permit application required by 40 CFR 55.6 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the same time as the application is submitted to SLOCAPCD.

(2) SLOCAPCD shall send a copy of any public comment notice required under §§ 55.6, 55.13 or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) and the Minerals Management Service.

(3) SLOCAPCD shall send a copy of any preliminary determination and any final permit action required under §§ 55.6, 55.13, or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(4) SLOCAPCD shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager of that area.

(5) The District shall request EPA guidance on any matter involving the interpretation of section 328 of the Act, the delegated sections of the OCS regulations or any other provision of 40 CFR part 55 to the extent that implementation, review, administration or enforcement of these provisions has not been covered by determinations or guidance sent to the District.

(6) Pursuant to its authority under the Clean Air Act, EPA may review permits issued by the District under this agreement to ensure that the District's implementation of Rule 215 is consistent with the time frames and requirements of the federal regulations (40 CFR part 55).

Exemptions

Pursuant to § 55.7:

(1) SLOCAPCD shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U. S. Coast Guard, a copy of the permit application that includes an exemption request, or the request for exemption if no permit is required, within 5 days of its receipt.

(2) SLOCAPCD shall consult with the Minerals Management Service of the U.S. Department of the Interior and the U.S. Coast Guard to determine whether the exemption will be granted or denied.

(3) If SLOCAPCD, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the day the SLOCAPCD received the exemption request, the request shall automatically be referred to the Administrator, who will process the referral in accordance with 40 CFR 55.7(f)(3). SLOCAPCD shall transmit to the Administrator, within 91 days of its receipt, the exemption request and all materials submitted with the request, such as the permit application or the compliance plan, and any other information considered or developed during the consultation process.

(4) SLOCAPCD will process exemption requests submitted with an approval to construct or permit to operate application in accordance with the procedures outlined in 40 CFR part 55.

Monitoring, Reporting, Inspections, and Compliance

SLOCAPCD may use any authority it possesses under state law to require monitoring and reporting, and to conduct inspections. The Administrator or SLOCAPCD shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or SLOCAPCD to conduct unannounced inspections.

General Conditions

(1) SLOCAPCD shall implement and enforce the Federal requirements of 40 CFR 55.13 as well as the applicable state and local requirements contained in 40 CFR 55.14. Notwithstanding the above, EPA retains authority for implementation and enforcement of the PSD requirements of part C of the Act and 40 CFR 52.21.

(2) The primary responsibility for enforcement of the OCS air regulations delegated to the District shall rest with the SLOCAPCD. Nothing in this agreement shall prohibit EPA from enforcing the OCS requirements of the Clean Air Act, the OCS regulations, or the terms and conditions of any permit issued by the District pursuant to this agreement.

(3) In the event that the District is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the OCS air regulations, the District will immediately notify the EPA Region 9 Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority.

(4) EPA shall retain authority to implement and enforce all requirements for OCS sources located beyond 25 miles from the state's seaward boundaries.

(5) This delegation may be amended at any time by the formal written agreement of both the SLOCAPCD and the U.S. EPA including amendments to add, change, or remove conditions or terms of this agreement.

(6) If SLOCAPCD adopts revisions to the District regulations reviewed by EPA and found to meet the requirements set forth at 40 CFR 55.11 for delegation, the parties may amend the agreement pursuant to condition 5 above, or EPA may take steps to revoke the delegation in whole or in part pursuant to condition 7 below. Any amendments to regulations submitted by the District to meet the requirements of 40 CFR 55.11 shall not be applied under this agreement until EPA has reviewed such amendments and determined that they are still adequate to implement and enforce the delegable portions of 40 CFR part 55.

(7) This delegation, after consultation with the SLOCAPCD, may be revoked in whole or in part if the U.S. EPA determines that the SLOCAPCD no longer meets the requirements for delegation set forth at 40 CFR 55.11(b)(1–4). Any such revocation shall be effective as of the date specified in a Notice of Revocation to the SLOCAPCD.

(8) This delegation of authority becomes effective upon the date of the signature of both parties to this Agreement.

(9) A notice of this delegated authority will be published in the **Federal Register**.

Dated: January 12, 1994

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

Dated: January 18, 1994.

John Wise,

Acting Regional Administrator, Region 9.

County of San Luis Obispo.

Harry L. Ovitt,

Chairman of the Board of Supervisors.

Attest:

F.M. Cooney,

Clerk of the Board of Supervisors.

Approved as to Form and Legal Effect:

James B. Lindhold, Jr.

County Counsel

R. Biering

Deputy County Counsel.

Dated: November 18, 1993.

III

U.S. EPA—Ventura County APCD Agreement for Delegation of Authority for Outer Continental Shelf Air Regulations (40 CFR Part 55)

The undersigned, on behalf of the Ventura County Air Pollution Control District ("VCAPCD" or "the District") and the United States Environmental Protection Agency ("EPA"), hereby agree to the delegation of authority from EPA to VCAPCD to implement and enforce the requirements of the Outer Continental Shelf Air Regulations ("OCS") (40 CFR part 55) within 25 miles of the state's seaward boundary, pursuant to section 328(a)(3) of the Clean Air Act ("the Act"), subject to the terms and conditions below. EPA has reviewed VCAPCD's request for delegation and has found that VCAPCD's regulations meet the requirements for delegation set forth at 40 CFR 55.11.

This delegation includes authority for the following sections of the Outer Continental Shelf Air Regulations:

Section	Title
55.1	Statutory authority and scope
55.2	Definitions
55.3	Applicability
55.4	Requirements to submit a notice of intent
55.6	Permit requirements
55.7	Exemptions
55.8	Monitoring, reporting, inspections, and compliance
55.9	Enforcement
55.10	Fees
55.13	Federal requirements that apply to OCS sources
55.14	Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries by state.

EPA is not delegating the authority to implement and enforce §§ 55.5 (Corresponding onshore area designation), 55.11 (Delegation), and 55.12 (Consistency updates), as authority for these sections is reserved to the Administrator. In addition, VCAPCD does not have SIP-approved PSD regulations, nor has it received delegation of authority from EPA for implementation and enforcement of the federal PSD program. Therefore, EPA shall retain authority for the PSD provisions of part C of the Act and the regulations promulgated thereunder at 40 CFR 52.21.

Under section 328(a)(3) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources. For the OCS sources for which the Ventura County APCD has been designated the corresponding onshore area (COA), the State has submitted VCAPCD's regulations to EPA and requested that EPA delegate authority to VCAPCD to implement and enforce the OCS air regulations. VCAPCD's regulations have been reviewed by EPA and determined to be adequate for implementing and enforcing the delegable sections of 40 CFR part 55.

The OCS regulations set forth the following criteria for delegation at 40 CFR 55.11:

(1) The state has adopted the appropriate portions of 40 CFR part 55 into state law—VCAPCD adopted Rule 72.1, Outer Continental Shelf Air Regulations, on December 22, 1992. This rule incorporates the provisions of 40 CFR Part 55 that EPA is delegating to the District. (NOTE: Section 55.5, corresponding onshore area designations, was adopted by VCAPCD but EPA will not delegate authority for this section, as provided by § 55.11(a)).

(2) The state has adequate authority under state law to implement and enforce the requirements of part 55—According to the State Attorney General's January 12, 1993 letter which was forwarded to EPA, VCAPCD has the authority to implement and enforce the requirements of part 55.

(3) The state has adequate resources to implement and enforce the requirements of part 55—VCAPCD has submitted information documenting that the District has adequate resources to implement and enforce the requirements of part 55.

(4) The state has adequate administrative procedures to implement and enforce the requirements of part 55, including public notice and comment procedures—VCAPCD's administrative procedures have been reviewed by EPA and found to be adequate. The following rules were submitted by VCAPCD for review to meet this requirement:

Rule 8 Access to Facilities (Adopted 5/23/72, renumbered 11/21/78)
Rule 9 Arrest Authority (Adopted 11/21/78)
Rule 17 Disclosure of Air Toxics (Adopted 4/17/90)
Rule 25* Action on Applications (Adopted 1/10/84)
Rule 26.7 New Source Review (Adopted 12/22/92)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 31 Public Disclosure of Data (Adopted 11/22/77)
Regulation VIII Emergency Action (Adopted 11/22/77)

* District Rule 25 contains procedures for processing permit applications. When an exemption request is submitted, section 55.6(a)(2) will supersede Rule 25.

EPA maintains that the District may use any administrative Procedures it has under State law to implement and enforce the requirements of part 55, such as a variance. However, as stated in the preamble to part 55, as onshore, a variance will not shield a source from enforcement action by EPA.

Permits

Pursuant to § 55.6:

(1) VCAPCD will require that the Applicant send a copy of any permit application required by 40 CFR 55.6 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the same time as the application is submitted to VCAPCD.

(2) VCAPCD shall send a copy of any public comment notice required under §§ 55.6, 55.13 or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) and the Minerals Management Service.

(3) VCAPCD shall send a copy of any preliminary determination and any final permit action required under §§ 55.6, 55.13 or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(4) VCAPCD shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager of that area.

(5) The District will request EPA guidance on any matter involving the interpretation of section 328 of the Act, the delegated sections of the OCS air regulations or any other provision of 40 CFR part 55 to the extent that implementation, review, administration or enforcement of these provisions has not been covered by determinations or guidance sent to the District.

(6) Pursuant to its authority under the Clean Air Act, EPA may review permits issued by the District under this agreement to ensure that the District's implementation of Rule 72.1 is consistent with the time frames and requirements of the federal regulations.

Exemptions

Pursuant to § 55.7:

(1) VCAPCD shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U.S. Coast Guard, a copy of the permit application, or the request for exemption if no permit is required, within 5 days of its receipt.

(2) VCAPCD shall consult with the Minerals Management Service of the U.S. Department of the Interior and the U.S. Coast Guard to determine whether the exemption will be granted or denied.

(3) If VCAPCD, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the day the VCAPCD received the exemption request, the request shall automatically be referred to the Administrator, who will process the referral in accordance with 40 CFR 55.7(f)(3). VCAPCD shall transmit to the Administrator, within 91 days of its receipt, the exemption request and all materials submitted with the request, such as the permit application or the compliance plan, and any other information considered or developed during the consultation process.

(4) VCAPCD will process exemption requests submitted with an approval to construct or permit to operate application in accordance with the procedures outlined in 40 CFR 55.6(a)(2), which supersedes District Rule 25.

Monitoring, Reporting, Inspections, and Compliance

VCAPCD may use any authority it possesses under state law to require monitoring and reporting, and to conduct inspections. The Administrator or VCAPCD shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or VCAPCD to conduct unannounced inspections.

General Conditions

(1) VCAPCD agrees to implement and enforce the Federal requirements of 40 CFR 55.13 as well as the applicable state and local requirements contained in 40 CFR 55.14. Notwithstanding the above, EPA retains authority for implementation and enforcement of the PSD requirements of part C of the Act and 40 CFR 52.21.

(2) The primary responsibility for enforcement of the OCS air regulations delegated to the District will rest with the VCAPCD. Nothing in this agreement shall prohibit EPA from regulations, or the terms and conditions of any permit issued by the District pursuant to this agreement.

(3) In the event that the District is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the OCS air regulations, the District will immediately notify the EPA Region 9 Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority.

(4) EPA shall retain authority to implement and enforce all requirements for OCS sources located beyond 25 miles from states' seaward boundaries.

(5) This delegation may be amended at any time by the formal written agreement of both the VCAPCD and the U.S. EPA including amendments to add, change, or remove conditions or terms of this agreement.

(6) If VCAPCD adopts revisions to the District regulations reviewed by EPA and found to meet the requirements set forth at 40 CFR 55.11 for delegation, the parties may amend the agreement pursuant to condition 5 above, or EPA may take steps to revoke the delegation in whole or in part pursuant to condition 7 below. Any amendments to regulations submitted by the District to meet the requirements of 40 CFR 55.11 shall not be applied under this agreement until EPA has reviewed such amendments and determined that they are still adequate to implement and enforce the delegable portions of 40 CFR part 55.

(7) If the U.S. EPA determines that: (a) The requirements of the OCS air regulations are not being adequately implemented or enforced by VCAPCD; or (b) VCAPCD no longer has adequate regulations as required by 40 CFR 55.11(b) in accordance with the terms and conditions of this delegation, the requirements of 40 CFR part 55, or the Clean Air Act, this delegation, after consultation with the VCAPCD, may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the VCAPCD.

(8) This delegation of authority becomes effective upon the date of the signature of both parties to this Agreement.

(9) A notice of this delegated authority will be published in the **Federal Register.**

Dated: January 18, 1994.

Vicky Howard,

Ventura County Air Pollution Control District.

Dated: January 27, 1994.

John Wise,

Acting Regional Administrator, Region 9.

EPA Action

The EPA hereby notifies the public that it has delegated the authority to implement and enforce the requirements of the OCS air regulations (40 CFR part 55) promulgated by EPA on September 4, 1992 to the above-referenced local agencies.

The Office of Management and Budget has exempted this rulemaking from the requirements of section 6 of Executive Order 12866.

This notice is issued under the authority of section 328 of the Clean Air Act, 42 U.S.C. 7627.

Dated: February 26, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–5869 Filed 3–11–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7030

[AZ–930–4210–06; AZA 26001, AZA 26002, AZA 26003]

Withdrawal of National Forest System Lands for Campgrounds and an Administrative Site; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 60 acres of National Forest System lands from mining for 20 years to protect significant capital improvements associated with the Reef Townsite Campground, the Ramsey Vista Campground, and the Carr Canyon House Administrative Site. The lands have been and will remain open to mineral leasing and surface uses authorized by the Forest Service.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–5509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the capital investments of the Reef Townsite and Ramsey Vista Campgrounds and the Carr Canyon House Administrative Site:

Gila and Salt River Meridian

Coronado National Forest

T. 23 S., R. 20 E.,
Sec 11, N½SE¼SW¼.
Sec 14, W½NW¼SW¼;
Sec 15, E½NW¼SW¼.

The areas described aggregate 60 acres in Cochise County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: February 25, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-5795 Filed 3-11-94; 8:45 am]

BILLING CODE 4310-32-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7592]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Division Director, Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Iowa:			
Norway, city of Benton County	190632	January 21, 1994	9-26-75
Greene County, unincorporated areas	190869	January 27, 1994	6-14-77
Kentucky: Allen County, unincorporated areas	210267	February 10, 1994	6-24-77
Nebraska: Stanton County, unincorporated areas	310478	February 14, 1994	
Arkansas: Bull Shoals, city of Marion County	050394	February 18, 1994	4-25-75
New Eligible—Regular Program			
California: American Canyon, city of Napa County [1]	060755	January 11, 1994	

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Minnesota: Wyoming, township of Chisago County[2]	270752	January 28, 1994	
Nebraska: Merrick County unincorporated areas	310457	January 31, 1994	12-2-92
Illinois: Hillview, village of Greene County	170253	January 31, 1994	9-30-83
Arizona: Fountain Hills, town of Maricopa County	040135	February 10, 1994	12-3-93
Florida:			
Oak Hill, city of Volusia County	120624	February 21, 1994	7-15-92
Alachua, city of Alachua County[3]	120664	.....do	
Nebraska: Axtell, village of Kearney County	310344	February 24, 1994	[4] NSFHAs
Iowa: Preston, city of Jackson County	190431	February 28, 1994	3-3-92
Reinstatements—Regular Program			
Kentucky: Augusta, city of Bracken County	210022	February 26, 1975, Emerg.; January 19, 1978, Reg.; December 3, 1993, Susp.; January 31, 1994 Rein.	12-3-93
Pennsylvania: Rockwood, borough of Somerset County	422045	February 17, 1977, Emerg.; June 18, 1990, Reg.; June 18, 1990, Susp.; February 1, 1994, Rein.	6-18-90
New York: Marshall, town of Oneida County	360534	July 17, 1975, Emerg.; September 30, 1982, Reg.; September 30, 1982, Susp.; February 7, 1994 Rein.	9-30-82
Alabama: Sheffield, city of Colbert County	010048	January 10, 1974, Emerg.; December 15, 1977, Reg.; January 28, 1985, With.; February 10, 1994, Rein.	3-18-83
New York: Constableville, village of Lewis County	360360	April 22, 1981, Emerg.; July 16, 1982, Reg.; November 4, 1992; Susp., February 10, 1994 Rein.	7-16-82
Pennsylvania:			
Concord, township of Delaware County	420410	February 25, 1972, Emerg.; January 5, 1978, Reg.; December 3, 1993, Susp.; February 11, 1994, Reg.	9-30-93
Huntington, township of Adams County	421143	March 26, 1974, Emerg.; July 15, 1988, Reg.; July 15, 1988, Susp.; February 11, 1994 Rein.	7-15-88
Somerset, township of Somerset County	422055	July 19, 1976, Emerg.; May 17, 1990, Reg.; May 17, 1990, Susp.; February 11, 1994 Rein.	7-2-92
Eddystone, borough of Delaware County	420413	September 15, 1972, Emerg.; February 2, 1977, Reg.; December 3, 1993, Susp.; February 14, 1994, Rein.	9-30-93
Gambel, township of Lycoming County	420974	August 1, 1973, Emerg.; September 30, 1980, Reg.; June 16, 1993, Susp.; February 14, 1994, Rein.	9-30-80
Parkside, borough of Delaware County	420426	December 10, 1971, Emerg.; July 5, 1977, Reg.; December 3, 1993, Susp.; February 14, 1994, Rein.	9-30-93
Vermont: Coventry, town of Orleans County	500246	July 23, 1975, Emerg.; September 27, 1985, Reg.; November 1, 1985, Susp.; February 18, 1994, Rein.	9-27-85
Regular Program Conversions			
Region V:			
Indiana: Anderson, city of Madison County	180150	February 16, 1994, Suspension Withdrawn.	2-16-94
Minnesota: Pine Island, city of Goodhue County	270145	.....do	2-16-94
Region VIII:			
South Dakota: Fort Pierre, city of Stanley County	465419	.....do	2-16-94
Region X:			
Washington: Bothell, city of King County	530075	.....do	3-2-94

[1] The City of American Canyon has adopted Napa County's Flood Insurance Rate Map (FIRM) dated September 28, 1990, for floodplain management and insurance purposes.

[2] The Township of Wyoming has adopted Chisago County's FIRM dated August 2, 1993, for floodplain management and insurance purposes.

[3] The City of Alachua has adopted Alachua County's FIRM dated November 4, 1988, for floodplain management and flood insurance purposes.

[4] No Special Flood Hazard Areas.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement. (Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94-5865 Filed 3-11-94; 8:45 am]

BILLING CODE 6718-21-P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Aircraft Fuel Cells

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Department of Defense has amended the Defense Federal Acquisition Regulation Supplement to prohibit the use of Fiscal Year 1994 Department of Defense appropriated funds for acquisition of aircraft fuel cells unless such cells are manufactured in the United States.

DATES: *Effective Date:* March 7, 1994.

Comment Date: Comments on the interim DFARS rule should be submitted in writing to the address shown below on or before May 13, 1994 to be considered in the formulation of a final rule. Please cite DFARS Case 93-D307 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Alyce Sullivan, OUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 697-9845.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8090 of the Fiscal Year 1994 Defense Appropriation Act (Pub. L. 103-139) prohibits use of Fiscal Year 1994 appropriated funds for acquisition of aircraft fuel cells unless such cells are manufactured in the United States.

The Director, Defense Procurement, issued Departmental Letter 94-003, March 7, 1994, to implement the restriction on acquisition of aircraft fuel cells in the Defense Federal Acquisition Regulation Supplement.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies but is not expected to have a significant impact on a substantial number of small entities because the revisions are limited to acquisition of aircraft fuel cells, and limit such acquisitions to U.S. manufacturers.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

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. This action is necessary because section 8090 became effective upon enactment of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139), on November 11, 1993. However, pursuant to Public Law 98-577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

1. The authority for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR part 1.

PART 225—FOREIGN ACQUISITION

2. A new section 225.7021 is added to read as follows:

225.7021 Restriction on aircraft fuel cells.

225.7021-1 Restriction.

In accordance with section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139), do not purchase aircraft fuel cells unless they are manufactured in the United States.

225.7021-2 Waiver.

The restriction may be waived by the Secretary of the department responsible for the acquisition, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7021-3 Contract clause.

Unless a waiver has been granted in accordance with 225.7021-2, use the clause at 252.225-7038, Restriction on Acquisition of Aircraft Fuel Cells, in all solicitations and contracts which—

(a) Use fiscal year 1994 funds; and

(b) Require delivery of aircraft fuel cells.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225-7038 is added to read as follows:

252.225-7038 Restriction on acquisition of aircraft fuel cells.

As prescribed in 225.7021-3, use the following clause:

Restriction on Acquisition of Aircraft Fuel Cells (Fed 1994)

The Contractor agrees that all aircraft fuel cells furnished under this contract have been manufactured in the United States.

(End of clause)

[FR Doc. 94-5817 Filed 3-11-94; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 380

[Docket Number 940251-4051 I.D. 110193C]

RIN 0648-AF51

Antarctic Marine Living Marine Resources Convention Act of 1984

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the harvesting of Antarctic marine living resources and/or other associated activities by persons subject to jurisdiction of the United States by adding regulations for the protection of land-based ecosystem monitoring sites designated within Convention for the Conservation of Antarctic Living Marine Resources (CCAMLR) waters. The regulations implement conservation and management measures promulgated by the Commission for the Conservation of Antarctic Marine Living Resources (Commission) and accepted in whole by the Government of the United States to

regulate activities within Convention waters. The Commission, at its ninth meeting in 1990, established a procedure for protecting sites within the CCAMLR Ecosystem Monitoring Program (CEMP). Long-term investigations of selected sites within CEMP will be conducted to monitor changes in the ecosystem. The Commission determined that these sites are in need of the status of "Specially Protected Sites" similar to the program established under the Antarctic Treaty. The intent of these regulations is to implement the agreed to procedures for CEMP.

EFFECTIVE DATE: March 14, 1994.

ADDRESSES: A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

Comments regarding burden estimates or collection of information aspects of this rule should be sent to Thomas J. McIntyre, National Marine Fisheries Service, 1315 East-West Highway, room 13225, Silver Spring, MD 20910–3233, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Paperwork Reduction Act Project 0648–0194.

FOR FURTHER INFORMATION CONTACT: Thomas J. McIntyre (NMFS Protected Resources Management Division), 301–713–2319.

SUPPLEMENTARY INFORMATION:

Background

At its ninth annual meeting in Hobart, Tasmania, Australia, in 1990, the Commission, of which the United States is a member, adopted detailed procedures for according protection to sites within the CEMP. This protection, extended pursuant to site-specific management plans, is intended to prevent adverse impacts to these sites resulting from certain forms of human activities. Once approved, management plans will be reviewed every 5 years to determine whether they require revision and whether continued protection is necessary. Section 307 of the Antarctic Living Marine Resources Convention Act of 1984 (the Act) states that the Secretary of Commerce, after consultation with the heads of appropriate agencies, shall promulgate such regulations as are necessary to implement the provisions of the Act and the Conservation Measures adopted by the Commission. This notice adds regulatory text for previously reserved § 380.28 of 50 CFR part 380 to implement CEMP procedures and the Commission's approved CEMP management plans. One part of the section requires individuals seeking permits in order to enter a CEMP site to apply either to NMFS or the National Science Foundation (NSF) as follows:

A. If the CEMP protected site is not also a site specially protected under the Antarctic Treaty, or the Protocol on Environmental Protection to the Antarctic Treaty, the individual must apply to NMFS for a CEMP entry permit.

B. If the CEMP protected site is also a site specially protected under the Antarctic Treaty or the Protocol on Environmental Protection to the Antarctic Treaty, and, thus, a site requiring a permit under the Antarctic Conservation Act (ACA) (and any superseding legislation), the individual must apply to NSF for a single CEMP/ACA permit.

Classification

The Secretary of Commerce has determined that this rule is necessary to implement the Act and to give effect to the conservation and management measures adopted by the Commission and agreed to by the United States.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget (OMB Approval Number 0648–0194).

The annual reporting burden for this collection of information is estimated to average 1 hour per application, and one half hour for preparation of a final report on the permitted activities. All reporting burden estimates include 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 Thomas J. McIntyre, National Marine Fisheries Service, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**). This rule is exempt from review under E. O. 12866.

List of Subjects in 50 CFR Part 380

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: March 6, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 380 is amended as follows:

PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

1. The authority citation for part 380 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

2. Section 380.2 is amended by adding a definition for *CEMP Entry Permit*, in alphabetical order, to read as follows:

§ 380.2 Definitions.

* * * * *

CEMP entry permit (CEMP permit) means a permit issued under 50 CFR 380.28 by the Assistant Administrator to a person subject to the jurisdiction of the United States authorizing the person to enter specially protected sites designated under the authority of the Convention Ecosystem Monitoring Program (CEMP) established by the Commission in accordance with the terms and conditions of the CEMP Management Plan for the specific site and the terms and conditions contained in the permit.

* * * * *

3. Section 380.28 is amended by adding text to read as follows:

§ 380.28 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.

(a) *General.* (1) Any person subject to the jurisdiction of the United States must apply for and be granted an entry permit authorizing specific activities prior to entering a CCAMLR Ecosystem Monitoring Program (CEMP) Protected Site designated in accordance with the CCAMLR Conservation Measure describing the Procedures for According Protection for CEMP Sites.

(2) If a CEMP Protected Site is also a site specially protected under the Antarctic Treaty (or the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes, when it enters into force), an applicant seeking to enter such a Protected Site must apply to the Director of the National Science Foundation (NSF) for a permit under applicable provisions of the Antarctic Conservation Act of 1978 (ACA)(16 U.S.C. 2401 *et seq.*) or any superseding legislation. The permit granted by NSF shall constitute a joint CEMP/ACA Protected Site permit and any person holding such a permit must

comply with the appropriate CEMP Protected Site Management Plan. In all other cases, an applicant seeking a permit to enter a CEMP Protected Site must apply to the Assistant Administrator for a CEMP permit in accordance with the provisions of this section.

(b) *Responsibility of CEMP permit holders and persons designated as agents under a CEMP permit.* (1) The CEMP permit holder and person designated as agents under a CEMP permit are jointly and severally responsible for compliance with the Act, this part, and any permit issued under this part.

(2) The CEMP permit holder and agents designated under a CEMP permit are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the CEMP permit holder or agents, and regardless of knowledge concerning their occurrence.

(c) *Prohibitions regarding the Antarctic Treaty System and other applicable treaties and statutes.* Holders of permits to enter CEMP Protected Sites are not permitted to undertake any activities within a CEMP Protected Site that are not in compliance with the provisions of:

(1) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora (including the Protocol on the Environmental Protection to the Antarctic Treaty and its Annexes when it enters into force), as implemented under by the ACA and any superseding legislation. (Persons interested in conducting activities subject to the Antarctic Treaty or the Protocol should contact the Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230);

(2) The Convention for the Conservation of Antarctic Seals; and

(3) The Convention and its Conservation Measures in force, implemented under the Act.

(d) *Prohibitions on takings.* Permits issued under this section do not authorize any takings as defined in the applicable statutes governing the activities of persons in Antarctica. These CEMP permits specifically do not authorize takings or harvesting native birds, mammals and plants under:

(1) The ACA (administered by the NSF), 45 CFR part 670, which regulates all activities under the Antarctic Treaty south of 60 °S. lat. in Antarctica, and any superseding statute;

(2) The Act, 50 CFR part 380;

(3) The Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), 50 CFR part 216;

(4) The Endangered Species Act (16 U.S.C. 1531 *et seq.*), 50 CFR part 222; and

(5) The Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), 50 CFR part 10.

(e) *Issuance criteria.* Permits designated in this section may be issued by the Assistant Administrator upon a determination that:

(1) The specific activities meet the requirements of the Act;

(2) There is sufficient reason, established in the permit application, that the scientific purpose for the intended entry cannot be served elsewhere; and

(3) The actions permitted will not violate any provisions or prohibitions of the Protected Site's Management Plan submitted in compliance with the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites.

(f) *Application process.* An applicant seeking a CEMP permit from the Assistant Administrator to enter a CEMP Protected Site shall include the following in the application:

(1) A detailed justification that the scientific objectives of the applicant cannot be accomplished elsewhere and a description of how said objectives will be accomplished within the terms of the Protected Site's Management Plan; and

(2) A statement signed by the applicant that the applicant has read and fully understands the provisions and prohibitions of the Protected Site's Management Plan. Prospective applicants may obtain copies of the relevant Management Plans and the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites by requesting them from the Assistant Administrator.

(g) *Conditions.* CEMP permits issued under this section will contain special and general conditions including a condition that the permit holder shall submit a report describing the activities conducted under the permit within 30 days of the expiration of the CEMP permit.

(h) *Duration.* Permits issued under this section are valid for a period of 1 year. Applicants requesting a permit to reenter a Protected Site must include the report required by the general condition in the previously issued CEMP permit describing the activities conducted under authority of that permit.

(i) *Transfer.* CEMP permits are not transferable or assignable. A CEMP permit is valid only for the person to whom it is issued.

(j) *Modification.* (1) CEMP permits can be modified by submitting a request to the Assistant Administrator. Such requests shall specify:

(i) The action proposed to be taken along with a summary of the reasons therefore; and

(ii) The steps that the permit holder may take to demonstrate or achieve compliance with all lawful requirements. If a requested modification is not in compliance within the terms of the Protected Site's Management Plan, the Assistant Administrator will treat the requested modification as an application for a new CEMP permit and so notify the holder. Modifications will be acted upon within 30 days of receipt. The CEMP permit holder must report to the Assistant Administrator any change in previously submitted information within 10 days of the change.

(2) *Additional conditions and restrictions.* The Assistant Administrator may revise the CEMP permit effective upon notification of the permit holder, to impose additional conditions and restrictions as necessary to achieve the purposes of the Convention, the Act and the CEMP Management Plan. The CEMP permit holder must, as soon as possible, notify any and all agents operating under the permit of any and all revisions or modifications to the permit.

(k) *Revocation or suspension.* CEMP permits may be revoked or suspended based upon information received by the Assistant Administrator and such revocation or suspension shall be effective upon notification to the permit holder.

(1) A CEMP permit may be revoked or suspended based on a violation of the permit, the Act or this part.

(2) Failure to report a change in the information submitted in an CEMP permit application within 10 days of the change is a violation of this part and voids the application or permit, as applicable. 15 CFR part 904 governs permit sanctions under this part.

(l) *Exceptions.* No entry into a Protected Site described in this section shall be unlawful if committed under emergency conditions to prevent the loss of human life, compromise human safety, prevent the loss of vessels or aircraft or to prevent environmental damage.

(m) *Protected sites.* (1) Sites protected by the Antarctic Treaty and regulated by the ACA are listed at 45 CFR part 670 subparts G and H.

(2) The following site has been identified as a CEMP Protected Site subject to the regulatory authority of the Act:

(i) *Seal Islands, South Shetland Islands*—The Seal Islands are composed of islands and skerries located approximately 7 km north of the northwest corner of Elephant Island, South Shetland Islands. The Seal Islands CEMP Protected Site includes the entire Seal Islands group, which is defined as Seal Island plus any land or rocks exposed at mean low tide within a distance of 5.5 km of the point of highest elevation on Seal Island. Seal Island is situated at 60°59′14″ S. lat., 055°23′04″ W. long.

(ii) [Reserved]

[FR Doc. 94–5847 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 49
Monday, March 14, 1994

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-204-AD]

Airworthiness Directives; Boeing Model 747 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 747 series airplanes. This proposal would require inspections to detect cracking in the upper row of fasteners in the lower lobe of the fuselage skin lap joints, and repair, if necessary. This proposal is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. The actions specified by the proposed AD are intended to prevent separation of the fuselage skin and rapid loss of pressure in the airplane. This proposal also relates to the recommendations of the Airworthiness Assurance Task Force assigned to review Model 747 series airplanes, which indicate that, to assure long term continued operational safety, various structural inspections should be accomplished.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-204-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: Steven C. Fox, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2777; 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-204-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-204-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

In April 1988, a transport category airplane managed to land after cracks in rivet holes in the upper fuselage linked together, causing structural failure and uncontrolled decompression. An 18-foot section ripped from the fuselage. This accident focused greater attention on the problem of aging aircraft.

In June 1988, the FAA sponsored a conference on aging airplane issues, which was attended by representatives of the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes,
2. Develop corrosion directed inspections and prevention programs,
3. Review the adequacy of each operator's structural maintenance program,
4. Review and update the Supplemental Structural Inspection Documents (SSID), and
5. Assess repair quality.

The Working Group assigned to review the Boeing Model 747 series airplanes completed its work on Item 2 in July 1989 and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 747 fleet. This program is contained in Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program—

Model 747," dated July 1989. The FAA issued AD 90–25–05, Amendment 39–6790 (55 FR 49268, November 27, 1990), which requires implementation of a corrosion prevention and control program.

The Working Group completed a portion of its work on Item 1, above. The Working Group's proposal is contained in Boeing Document Number D6–35999, "Aging Airplane Service Bulletin Structural Modification Program—Model 747." The FAA issued AD 90–06–06, Amendment 39–6490 (55 FR 8374, March 7, 1990), which requires the installation of the structural modifications identified in the Boeing Document, and AD 92–27–04, Amendment 39–8437 (58 FR 8693, February 17, 1993), which requires structural inspections of older airplanes.

Additional structural inspections are required by AD 86–09–07 R1, Amendment 39–5580 (52 FR 7564, March 12, 1987), which references Boeing Alert Service Bulletin 747–53A2267, dated March 28, 1986, and Revision 1, dated September 25, 1986.

The action being proposed herein follows from the ongoing activities of the Working Group relative to Item 1. The Working Group has identified certain service difficulties that warrant mandatory inspections following mandatory modification of these airplanes. The Working Group considers that these service difficulties can be controlled safely by repetitively inspecting following modification of these airplanes, and that, because of the safety implications, the inspections should be mandatory to assure that all operators perform them. Typically, the addressed unsafe conditions have occurred infrequently on older airplanes, and the Working Group has a very high degree of confidence in the ability of an inspection program to detect the damage before it impairs safety.

The Working Group has reviewed Boeing Service Bulletin 747–53A2267, and has recommended it to the FAA for mandatory inspection following modification to ensure the successful long-term operation of Model 747 series airplanes. The procedures contained in this service bulletin address reports of corrosion and cracking in the body skin of the lap joints under the wing-to-body fairing on Model 747 series airplanes that had accumulated between 21,500 flight hours and 33,000 flight hours. Operators have also reported finding corrosion and cracks at the lower body lap joints forward and aft of the wing-to-body fairing on airplanes that had accumulated more than 9,000 flight hours. Additionally, operators have reported finding fatigue cracking in the body frames adjacent to the lap joints on airplanes that had accumulated more than 10,000 flight cycles. Continued operation of these airplanes with corroded lap joints and cracked or broken adjacent frames could cause the skin to separate, which could lead to rapid loss of pressure in the airplane.

The FAA has concurred with the Working Group's recommendations and has determined that AD action is warranted to mandate the inspections to assure the continued airworthiness of the Model 747 fleet.

The FAA has reviewed and approved Revision 3 of Boeing Service Bulletin 747–53A2267, dated March 26, 1992, that describes procedures for external high frequency eddy current (HFEC) inspections to detect cracking in the upper row of fasteners in the lower lobe of the fuselage skin lap joints. Certain inspections to detect cracking of the lower lobe lap joints described in this service bulletin are required by AD 86–09–07 R1, which references the original issue of this service bulletin, dated March 8, 1986, and Revision 1, dated September 25, 1986. The "full" modification (including the "permanent" repair) and the "optional" modification of the lower lobe lap joints described in this service bulletin are required by AD 90–06–06, which also references both the original issue of this service bulletin and Revision 1. The inspections to detect corrosion described in this service bulletin are required by AD 90–25–05, Amendment 39–6790 (55 FR 49268, November 27, 1990).

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive external high frequency eddy current inspections to detect cracking in the upper row of fasteners in modified lap joints, and repair, if necessary. The inspections would be required to be accomplished in accordance with the service bulletin described previously.

The requirements of this proposed AD are not intended to duplicate, rescind, or supersede the requirements of AD 86–09–07 R1, AD 90–06–06, or AD 90–25–05. The FAA's intent is to require the external HFEC inspections, described above, of older airplanes following the mandatory modifications required by AD 90–06–06, in addition to those inspections required by AD 86–09–07 R1 and AD 90–25–05.

There are approximately 200 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 118 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 124 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 $804,760, or $6,820 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The FAA recognizes that the proposed inspections would require a large number of work hours to accomplish. However, the compliance times specified in paragraph (a) of this proposed AD should allow ample time for the inspections to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

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 "significant regulatory action" under Executive Order 12866; (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–204–AD.

Applicability: Model 747 series airplanes having line positions 1 through 200 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of fuselage skin and rapid loss of pressure in the airplane, accomplish the following: (a) Perform an external high frequency eddy current inspection to detect cracks in the upper row of fasteners in the modified lap joints in accordance with Boeing Service Bulletin 747–53A2267, Revision 3, dated March 26, 1992, at the time specified in paragraph (a)(1) or (a)(2) or (a)(3) of this AD, as applicable.

(1) For airplanes on which the full modification required by AD 90–06–06, Amendment 39–6490, has been accomplished in accordance with Revision 2 of Boeing Service Bulletin 747–53A2267, dated March 29, 1990, or Revision 3, dated March 26, 1992: Prior to the accumulation of 10,000 flight cycles after accomplishment of the full modification.

(2) For airplanes on which the full modification required by AD 90–06–06, Amendment 39–6490, has been accomplished in accordance with Boeing Service Bulletin 747–53A2267, dated March 8, 1986, or Revision 1, dated September 25, 1986: Prior to the accumulation of 7,000 flight cycles after accomplishment of the full modification.

(3) For airplanes on which the optional modification has been accomplished in accordance with Boeing Service Bulletin 747–53A2267, dated March 28, 1986; or Revision 1, dated September 25, 1986; or Revision 2, dated March 29, 1990; or Revision 3, dated March 26, 1992: Prior to the accumulation of 7,000 flight cycles after accomplishment of the optional modification.

(b) If no cracking is detected, repeat these inspections thereafter at intervals not to exceed 3,000 flight cycles.

(c) If any cracking is detected, prior to further flight, repair in accordance with the Section 53–30–03 of the 747 Structural Repair Manual, and repeat these inspections thereafter at intervals not to exceed 3,000 flight cycles.

(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, 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.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (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 March 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5853 Filed 3–11–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–222–AD]

Airworthiness Directives; Canadair Model CL–600–2B16 (CL–601–3A) 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 Canadair Model CL–600–2B16 series airplanes. This proposal would require inspection to detect chafing of the wiring harness of the air driven generator (ADG), modification of the wiring harness, and repair of any chafed harness. This proposal is prompted by a report that the wiring harness on certain airplanes were produced in a configuration that is subject to chafing and electrical shorting. The actions specified by the proposed AD are intended to prevent loss of ADG power to the essential bus when the ADG is deployed during an emergency situation.

DATES: Comments must be received by May, 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–222–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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, H3C 3G9 Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; 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–222–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–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 23, 1991, the FAA issued AD 91–19–01, Amendment 39–8026 (56

FR 45893, September 9, 1991), applicable to certain Canadair Model CL-600-1A11, CL-600-2A12, and CL-600-2B16 series airplanes. That AD requires inspection to detect chafing and modification of the wiring harness of the air driven generator (ADG), and repair of any chafed harness. That action was prompted by reports of chafing of the ADG electrical output harness against the backshell of the connector on the turbine generator assembly. Although the chafing occurred while the ADG was in the stowed position, when the ADG was deployed, the chafed wires shorted to the airplane structure and prevented the ADG from powering the essential bus. This essential bus provides electrical power to the hydraulic flight control system and to the essential flight control equipment. In these instances, the shorting also damaged the ADG output harness and its support structure.

This condition, if not corrected, could result in loss of emergency power to the essential bus when the ADG is deployed.

Since issuance of AD 91-19-01, Transport Canada Aviation, which is the airworthiness authority for Canada, notified the FAA that the same unsafe condition addressed in AD 91-19-01 may exist on certain additional Model CL-600-2B16 series airplanes. Transport Canada Aviation advises that, during production of Model CL-600-2B16 series airplanes having serial numbers 5099 through 5131, inclusive, the wiring harnesses of the ADG's were not modified to preclude chafing against the backshell of the connector on the turbine generator assembly. (AD 91-19-01 is applicable only to airplanes having serial numbers 5001 through 5098, inclusive.) Therefore, these airplanes are also subject to losing ADG power to the essential bus when the ADG is deployed during an emergency situation.

Canadair has issued Alert Service Bulletin A601-0370, Revision 1, dated April 15, 1993, that describes procedures for a one-time inspection to detect chafing and modification of the ADG wiring harness, and repair of any chafed harness. This modification entails replacing two existing harness support brackets with redesigned brackets that would preclude chafing of the harness. The effectivity of this service bulletin includes Model CL-600-2B16 series airplanes having serial numbers 5099 through 5131 only. Transport Canada Aviation classified this alert service bulletin as mandatory and issued Canadian Airworthiness Directive CF-91-21R1, dated May 6, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection to detect chafing and modification of the wiring harness of the ADG, and repair of any chafed harness. The actions would be required to be accomplished in accordance with the alert service bulletin described previously. This proposed AD would apply only to airplanes having serial numbers 5099 through 5131, inclusive.

Note: The FAA's normal policy is that when an AD requires a substantive change, such as a change in its applicability, the "old" AD is superseded by removing it from the system and a new AD is added. In the case of this AD action, the FAA normally would have proposed superseding AD 91-19-01 to expand its applicability to include the additional affected airplanes. However, in reconsideration of the entire fleet size that would be affected by a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to these additional airplanes. This AD does not supersede AD 91-19-01; airplanes listed in the applicability of AD 91-19-01 are required to continue to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable only to airplanes having serial numbers 5099 through 5131, inclusive.)

The FAA estimates that 25 airplanes 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 inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $1,375, or $55 per airplane.

The FAA estimates that it would take approximately 9 work hours per airplane to accomplish the proposed modification and the average labor rate is $55 per work hour. Required parts would cost approximately $199 per airplane. Based on these figures, the total cost impact of the proposed modification on U.S. operators is estimated to be $17,350 or $694 per airplane.

Based on the figures, above, the total (inspection plus modification) cost impact of the proposed AD on U.S. operators is estimated to be $18,725 or $749 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 "significant regulatory action" under Executive Order 12866; (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:

Canadair: Docket 93–NM–222–AD.

Applicability: Model CL–600–2B16 series airplanes having serial numbers 5099 through 5131, inclusive; certificated in any category.

Note 1: Airplanes having serial numbers 5001 through 5098, inclusive, are subject to the requirements of AD 91–19–01, Amendment 39–8026.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of emergency power to the essential bus when the air driven generator (ADG) is deployed, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD, inspect to detect chafing of the wiring harness of the ADG in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993. If chafing is found, prior to further flight, repair in accordance with the service bulletin.

(b) Within 60 days after the effective date of this AD, modify the harness installation of the ADG in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (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 March 8, 1994

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 94–5851 Filed 3–11–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–229–AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes (Excluding Mark 050 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 Fokker Model F27 series airplanes. This proposal would require accomplishment of certain structural modifications. This proposal is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–229–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: 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–229–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–229–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a transport category airplane managed to land after tiny cracks in rivet holes in the upper fuselage linked together, causing structural failure and explosive decompression. An 18-foot section ripped from the fuselage. This accident focused greater attention on the problem of aging aircraft.

In June 1988, the FAA sponsored a conference on aging airplane issues, which was attended by representatives of the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The FAA, in concert with the Regional Airline Association (RAA); the General Aviation Manufacturers Association (GAMA); several U.S. and non-U.S. operators of the affected airplanes; the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands; and Fokker; has agreed to undertake the task of identifying and implementing procedures to ensure continuing structural airworthiness of aging commuter-class airplanes. This group reviewed selected service bulletins, applicable to Fokker Model F27 series

airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

This group's proposal is contained in Fokker Report Number SE-278, "F27 Aging Aircraft Project-Final Document," Issue 3, dated February 1, 1993. This Report references modifications from eight service bulletins and recommends that they be incorporated in the applicable Fokker Model F27 series airplanes. The modifications consist of three modifications to the fuselage, two modifications to the wing, and three modifications to the empennage of the airplane. They include structural reinforcement of frames, ribs, and stringers; replacement of formers and ribs; and installation of inspection doors and covers, access holes, and drain holes.

The procedures described in these service bulletins are intended to positively address conditions identified in Model F27 series airplanes that, if not corrected, could result in structural failure.

The RLD classified this Report as mandatory and issued Netherlands Airworthiness Directive (BLA) 91-058/5 (A), dated July 16, 1993, 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 fatigue cracking and corrosion are likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of Fokker Model F27 series airplanes prior to their economic design goal in accordance with the Fokker Report described previously.

The economic design goal of an airplane is typically considered to be the period of service after which a substantial increase in the maintenance costs is expected to take place in order to assure continued operational safety. The economic design goal for Fokker Model F27 series airplanes is 90,000 landings for structural problems associated with fatigue damage.

The proposed compliance time for implementation of the mandatory structural modification program is prior to reaching the applicable economic design goal. This time interval was determined based upon the ability of the manufacturer to provide the parts necessary for the modification, and the time necessary to incorporate the modifications.

In the interim, safety will be provided by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include operators' on-going basic maintenance programs; continuing inspections required by numerous previously issued AD's; the Structural Integrity Program (SIP) program, previously mandated by AD 92-19-07, Amendment 39-8365 (57 FR 42693, September 16, 1992); the FAA's increased emphasis on surveillance of operators' maintenance programs and procedures; and the FAA's participation in programs to physically inspect high-time airplanes during scheduled heavy maintenance.

The FAA estimates that 58 Fokker Model F27 series airplanes (excluding Mark 050 series airplanes) of U.S. registry would be affected by this proposed AD within the initial threshold. Since not all affected airplanes would be required to accomplish every modification referenced in each of the service bulletins, the cost impact of the proposed modifications is estimated in the following table. This cost includes the price of modification kits, and the estimated labor rate is $55 per work hour It does not include the cost of downtime, planning, set up, familiarization, or tool acquisition.

Service Bulletin No.	No. of affected airplanes	No. of work hours	Cost of parts per airplane	Cost per airplane	Total cost for affected airplanes
55-33 (B-77)	5	40	$314	$2,514.00	$12,570.00
55-12 (B-67)	5	20	121	1,221.00	6,105.00
55-12 (Part II)	5	30	168	1,818.00	9,090.00
55-61 Revision 2	13	45	2,235	4,710.00	61,230.00
57-68 Revision 1	58	556	1,279	31,859.00	1,847,822.00
53-19 (B-45) Issue 3	5	22	0	1,210.00	6,050.00
53-58 (B-149)	5	16	0	880.00	4,400.00
53-76 (B-211)	13	0.25	0	13.75	178.75
57-7 Issue 1	5	32	400	2,160.00	10,800.00

Based on these figures, above, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,958,245.75.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the proposed modifications would require a large number of work hours to accomplish. However, the threshold specified in each of the service bulletins referenced by the Fokker Report should allow ample time for the accomplishment of the modifications coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

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 "significant regulatory action" under Executive Order 12866; (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–229–AD.

Applicability: Model F27 series airplanes (excluding Mark 050 series airplanes), as listed in Fokker Report Number SE–278, "F27 Aging Aircraft Project—Final Document," Issue 3, dated February 1, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) Prior to reaching the incorporation thresholds listed in Part II of Fokker Report Number SE–278, "F27 Aging Aircraft Project—Final Document," Issue 3, dated February 1, 1993, accomplish the structural modifications listed in Part II of the Fokker Report.

Note 1: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for that inspection requirement.

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

Note 2: 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 Federal Aviation Regulations (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 March 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5852 Filed 3–11–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–76–AD]

Airworthiness Directives; Fokker Model F–27 Mark 100, 200, 300, 400, 500, 600, 700, and 800 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 Fokker Model F–27 series airplanes. This proposal would require the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. This proposal is prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–76–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: 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–76–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–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle transport category airplane (specifically, a Boeing Model 737) was involved in an accident in which the airplane suffered major structural damage during flight. Investigation of this accident revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by

the operator on other high-cycle transport category airplanes in its fleet revealed that other airplanes had extensive fatigue cracking and corrosion.

Prompted by the data gained from this accident, the FAA sponsored a conference on aging airplanes in June 1988, which was attended by representatives from the aviation industry and airworthiness authorities from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on the aging airplane fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America agreed to undertake the task of identifying and implementing procedures to ensure the continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force (AATF) was established in August 1988, with members representing aircraft manufacturers, operators, regulatory authorities, and other aviation industry representatives worldwide. The objective of the AATF was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;
2. Develop corrosion-directed inspections and prevention programs;
3. Review the adequacy of each operator's structural maintenance program;
4. Review and update the Supplemental Inspection Documents (SID); and
5. Assess repair quality.

The working group assigned to review the Fokker Model F–27 series airplanes has completed its work on Item (2) and has developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Model F–27 fleet. The program is contained in Fokker Document SE–291, "F–27 Corrosion Control Program," with revisions through October 1, 1993. (Hereafter, this publication is referred to as "the Document.") The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, classified this Document as mandatory and issued Netherlands Airworthiness Directive (BLA) 91–113, Issue 2, dated June 26, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

Section 2.1 of the Document defines three levels of corrosion: Level 1 corrosion is that which does not exceed certain limits; Level 2 corrosion is that which exceeds those limits; and Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Sections 2.2 and 2.3 of the Document provide general guidelines to develop a corrosion prevention and control program. These guidelines address such things as a baseline program, implementation ages, access for inspection, repetitive inspection intervals, operating environment, newly-acquired airplanes, general cleanliness of the airplane, and the fact that sampling is unreliable in effectively controlling corrosion.

Section 2.4 of the Document sets forth the general implementation schedule for the corrosion inspection/control program. As described in that section, each "aircraft zone" is assigned an "Initial Inspection Time" and a "Repeat Inspection Time." The program is applicable to each aircraft zone on all Model F–27 series airplanes whose age has reached or exceeded the Initial Inspection Time for that zone. For airplanes that have not reached or exceeded the Initial Inspection Time of the specific aircraft zone, a particular inspection task has to be performed before the airplane has reached the Initial Inspection Time for the specific aircraft zone, or before the Repeat Inspection Time of the task is exceeded (a maximum of 6 years), whichever occurs later. For airplanes that have already reached or exceeded the Initial Inspection Time of the specific aircraft zone, a particular inspection has to be performed before the Repeat Inspection Time of the task is exceeded or within 6 years, whichever occurs first.

Section 2.4 of the Document also identifies the specific aircraft zones that are subject to the program, and describes the "basic task" to be accomplished in each defined aircraft zone as part of the baseline program, along with the initial inspection time and repeat inspection time for each area, and other information necessary to carry out the program for each area. The Document defines a "basic task" as including not only the pertinent visual inspections of all primary and secondary structures, but any necessary repairs, application of sealants or corrosion inhibitors, and other follow-on procedures, as well. A basic task may also include detailed visual and non-destructive inspections (NDI); where NDI's are employed, adequate standards and procedures must be developed and properly recorded for the area inspected.

Section 2.5 establishes the procedures for reporting the results of the inspections conducted under the corrosion prevention and control program.

Section 2.6 provides for periodic review and update of the data contained in the Document.

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

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention and control program that is equivalent to or better than the program specified in the Document previously described. Operators would be permitted to accomplish this either by performing the specific basic tasks described in the Document (the "task-by-task method"), or by revising their FAA-approved maintenance program to include such a program.

Paragraph (a) of the proposal sets forth the proposed compliance times for the initial basic task of each affected aircraft zone. These compliance times are measured from a date one year after the effective date of the final rule. (The proposed compliance times are consistent with those of other similar AD's that the FAA has issued on this subject.) Generally, operators would be required to complete the initial basic task before reaching the "Initial Inspection Time" plus one "Repeat Inspection Time" interval for the aircraft zone, as detailed in the Document. The basic task would be required to be repeated at a time interval not to exceed the "Repeat Inspection Time" interval for that area, as detailed in the Document.

Paragraph (a) includes paragraph (a)(1)(iii), which states that, for each area that exceeds the initial inspection time for that area, operators must accomplish the initial basic task at a minimum rate of one such area every two years, beginning one year after the effective date of the final rule. The FAA

recognizes that this may cause a hardship on some small operators; in those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule. (A note to this effect is included in the proposal.)

Operators should note that the proposal does not contain a paragraph specifically to address repair actions. The FAA considers that any repairs would be carried out necessarily as a part of each basic task, as it is defined in the Document. As discussed previously, a "basic task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow- on procedures, as well. Paragraph (a) contains a note to reference the portion of the Document that defines a basic task, and to emphasize the importance of these corrective actions.

Paragraph (b) of the proposal provides for an optional method of complying with the rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document or an equivalent program approved by the FAA.

Paragraph (b) also would require that, subsequent to the accomplishment of the initial basic task, any extensions of Repeat Inspection Time intervals specified in the Document must be approved by the FAA.

Any operator electing to comply with proposed paragraph (b) would be permitted to use an alternative recordkeeping method to that otherwise required by Federal Aviation Regulations (FAR) section 91.417 or section 121.380, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program. In response to questions raised previously concerning recordkeeping and record retention requirements as they relate to the programmatic approach proposed in this AD action and other similar proposals that have been issued applicable to other airplane models, the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this proposal, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/ inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each basic task specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each basic task on each airplane. Once this cross-reference system has been established, this recording provision of Sections 91 and 121 requires no additional recording beyond what would otherwise be required normally

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under section 121 709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of sections 91 and 121 requires most of the recording that would result from this proposed AD Each time a basic task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, sections 91 and 121 of the FAR impose requirements for record retention.

Section 121.380(b)(1) and Section 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph 121.380(a)(2) [current status of AD's and current inspection status] be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed previously by operators regarding the recordkeeping obligations imposed by section 121.380 with regard to similar rulemaking on corrosion prevention and control programs, the FAA has included in this proposal certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. (The FAA has developed guidance material that will contain information to be considered by FAA Principal Maintenance Inspectors (PMI) when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the proposal provides for increasing a "Repeat Inspection Time" interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the proposal sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is determined to exist. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. Submit a report of the determination to the FAA and complete the basic task in the affected area on the remainder of the Model F–27 series airplanes in the operator's fleet; or

2. Submit a proposed schedule, for approval by the FAA, for performing the basic tasks in the affected area on the remainder of the operator's Model F–27 series fleet; or

3. Submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the basic tasks performed on the remainder of the operator's Model F–27 series fleet.

Paragraph (d)(2) of the proposal specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model F–27 series fleet is detected in a timely manner.

Paragraph (d)(3) of the proposal would require that, within the time schedule approved by the FAA, the operator must accomplish the basic tasks in the affected areas on the remaining airplanes in its Model F–27 series fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that, upon finding corrosion exceeding Level 1 during a repetitive inspection, an operator must adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that if corrosion is found and it is not considered representative of the operator's fleet, no further corrective action may be necessary, since a means to reduce any corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (a) or (b). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an airplane area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the proposal concerns adding airplanes to an operator's fleet, and the procedures that must be followed with regard to corrosion prevention and control. This paragraph differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first basic task in each aircraft zone to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first basic task in each aircraft zone to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The proposed rule would require that the specified procedures be accomplished before any operator places into service any airplane subject to the requirements of the proposed AD.

Paragraph (g) of the proposal would require that reports of Level 2 and Level 3 corrosion be submitted to Fokker within certain time periods after such corrosion is detected. A note has been included in this paragraph indicating that reporting to the FAA of any Level 2 or Level 3 corrosion found as a result of any opportunity inspections is highly desirable. Operators are not relieved, however, from reporting corrosion findings as required by FAR section 121.703.

The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD. It would take an average of approximately 7 work hours per basic task to accomplish the 75 basic tasks called out in the Document; this represents a total average of 525 work hours. 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 for the 6-year average inspection cycle is estimated to be $1,588,125, or $28,875 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

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 "significant regulatory action" under Executive Order 12866; (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–76–AD.

Applicability: Model F–27 Mark 100, 200, 300, 400, 500, 600, 700, and 800 series airplanes (does not include Model F–27 MK 050 series airplanes), certificated in any category

Compliance: Required as indicated, unless accomplished previously

Note 1: This AD references Fokker Document SE–291, "F–27 Corrosion Control Program," including all revisions through October 1, 1993, (hereafter referred to as "the Document"), for basic tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Standardization Branch, ANM–113, FAA, Transport Airplane Directorate." For those operators operating under Federal Aviation Regulation (FAR) part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Note 3: The FAA recommends that priority for implementing the corrosion prevention and control program, specified in this AD, be given to older aircraft and areas requiring a significant upgrade of previous maintenance procedures to meet the program requirements.

To preclude degradation of the structural capabilities of the airplane due to the problems associated with corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the basic tasks specified in section 2.4 of the Document in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 4: A "basic task," as defined in section 2.4 of the Documen., includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of sealants or corrosion inhibitors; and other follow-on actions.

Note 5: Airplane "areas" are those items listed in columnar form in the "ACTION" statement of each task, as listed in the Document.

Note 6: Basic tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial basic task requirements of paragraph (a)(1) of this AD

Note 7: Where non-destructive inspection (NDI) methods are employed, in accordance with section 2.4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR section 43.13.

(1) Complete the initial basic task of each aircraft zone specified in section 2.4 of the Document as follows:

(i) For airplane areas that have not yet exceeded the "Initial Inspection Time (IIT)" for a basic task as of one year after the effective date of this AD: Initial compliance must occur no later than the IIT, or no later than one Repeat Inspection Time (RIT) interval measured from a date one year after the effective date of this AD, whichever occurs later.

(ii) For airplane areas that have exceeded the IIT for a particular basic task as of one year after the effective date of this AD: Initial compliance must occur within one RIT interval for that task, or within 6 years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iii) Notwithstanding paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, accomplish the initial basic task, for each area that exceeds the IIT for that area, at a minimum rate of one such area every two years, beginning one year after the effective date of this AD.

Note 8: This paragraph does not require inspection of any area that has not exceeded the IIT for that area.

Note 9: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each basic task at a time interval not to exceed the RIT interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial basic task for each airplane area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR section 91.417 or section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial basic task, extensions of RIT intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an RIT interval to be increased by up to 10% but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the basic task in the affected aircraft zones on all Model F–27 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the basic tasks in the affected aircraft zones on the remaining Model F–27 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note: 10: Notwithstanding the provisions of section 2.1 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not

typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA (ref. **Note 2** of this AD) for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the basic tasks in the affected aircraft zones of the remaining Model F-27 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraph (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of basic tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first basic task in each aircraft zone to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each basic task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first basic task for each aircraft zone to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Within 7 days after the date of detection of any Level 3 corrosion, and within 3 months after the date of detection of any Level 2 corrosion, submit a report to Fokker of such findings, in accordance with section 2.5 of the Document.

Note 11: Reporting to the FAA of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note 12: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(i) 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.

(j) Reports of inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

Issued in Renton, Washington, on March 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-5850 Filed 3-11-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-6-93]

RIN 1545-AR54

Limitation on Annual Compensation for Qualified Plans; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the compensation limit for tax-qualified retirement plans under section 401(a)(17) of the Internal Revenue Code of 1986.

DATES: The public hearing originally scheduled for Thursday, March 17, 1994, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 or (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 401(a)(17) of the Internal Revenue Code. A notice of proposed rulemaking and public hearing appearing in the **Federal Register** for Thursday, December 30, 1993 (58 FR 69302), announced that the public hearing on the proposed regulations would be held on Thursday, March 17, 1994, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Thursday, March 17, 1994, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94-5856 Filed 3-11-94; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposal amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes in the State's revegetation success document.

This document sets forth the times and locations that the North Dakota program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. April 13, 1994. If requested, a public hearing on the proposed amendment will be held on April 8, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on March 29, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document 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 Casper Field Office.

Guy Padgett, Director, Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, WY 82601–1918 (307) 261–5776.

Mr. Edward J. Englerth, Director, Reclamation Division; North Dakota Public Service Commission Capitol Building; Bismarck, North Dakota 58505–0165 (701) 224–4092.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the North Dakota Public Service Commission. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated February 17, 1994, (Administrative Record No. ND–U–01) North Dakota submitted a proposed amendment to its permanent program pursuant to SMCRA. The North Dakota proposed amendment XX consists of changes to the State revegetation success document "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" including changes to address required program amendments at 30 CFR 934.16 (b through i, w and x).

The following areas are proposed for change:

(1) Section I–A regarding concurrence of other Federal and State agencies and additional reference cites.

(2) Section II–B regarding various modifications to the Subsections on County Soil Survey Estimates, Cropland Productivity Indexes, Average County Spring Wheat Yields, SCS Yield Estimates, and Updating SCS Data.

(3) Section II–C, Subsection on Requirements for Successful Revegetation regarding statistical confidence and management practices; Subsection on Revegetation Success Standards for Third Stage Bond Release regarding prime farmland standards; Subsection on Revegetation Success Standards for Fourth-Stage Release regarding changes for the crops most commonly grown and methods of calculating success standards.

(4) Section II–D, Subsection on Premining Assessment regarding inventory requirements and range site descriptions; Subsection on Postmining Assessment regarding cover data requirements and mapping; Subsection on Fourth Stage Bond Release regarding the use of aerial photography, cover data requirements, and mapping.

(5) Section II–E, Subsection on Requirements for Successful Revegetation regarding changes to species composition, diversity, seasonality and permanence; Subsection on Premining Assessment regarding inventory requirements; Subsection on Postmining Assessment regarding data requirements, mapping, species composition, and production standards.

(6) Section II–F, Subsection on Requirements for Successful Revegetation regarding consultation with State agencies, erosion control, stocking rates, and survival measurements.

(7) Section II–G, Subsection on Definition of shelterbelt; Subsection on Requirements for Successful Revegetation regarding ground cover requirements, species composition data, replacement requirements, and time in place requirements.

(8) Section II–H, Changes to the Introduction and Definitions for fish and wildlife habitat; Subsection on Grasslands regarding statistical requirements for ground cover measurements, composition requirements, and data requirements; Subsection on Wetlands regarding requirements for successful vegetation.

(9) Section III–B, changes to the use of soil mapping units in calculating standards.

(10) Section III–C, changes to sampling designs.

(11) Section III–D, changes to the methods for measuring productivity, cover, and diversity.

(12) Section III–E, changes to the methods of statistical analysis.

(13) Appendix A, changes to management practices.

III. Public Comment Procedures

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 North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. March 29, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**.

A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12866

This proposed rule is exempted from review by the office of Management and Budget under Executive Order 12866 (Reduction of Regulatory Burden).

Compliance With 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 1255) and the Federal regulations at 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.

Compliance With the 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.*).

Compliance With the 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 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 4, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–5890 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 94

[CC Docket No. 92–166; FCC No. 94–11]

Licensing Policies and Procedures, Domestic Common Carrier Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On January 19, 1994, the Commission adopted a Notice of Proposed Rulemaking seeking comments on its proposed rules to govern the licensing and regulation of mobile satellite systems operating in the 1610–1626.5/2483.5–2500 MHz frequency bands (1.6/2.4 GHz MSS). The proposed qualification requirements and technical rules are intended to facilitate the provision of new domestic and international satellite services.

DATES: *Comment date:* May 5, 1994; *Reply comment date:* June 6, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, Common Carrier Bureau, (202) 634–1682; Kathleen Campbell, Common Carrier Bureau, (202) 634–1952.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted January 19, 1994, and released February 18, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554. A complete text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037. Persons wishing to comment on this collection of information should direct their comments to Timothy Fain, (202) 395–3561, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, (202) 632–7513.

Title: Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610–1626.5/2483.5–2500 MHz Frequency Bands, CC Docket No. 92–166.

OMB Number: None.

Action: Proposed new and revised collection.

Respondents: Businesses or other for profit, including small businesses.

Frequency of Response: On occasion, annually.

Reporting requirements	No. of responses	Hours per response	Total
Proposed Sections 25.143(b), 25.213, 25.203 (j), (k)	6	900	5400
Proposed Section 25,143(e)(1)	5	15	65
Proposed Section 25.143(e)(2)	5	3	15
Proposed Section 25.143 (c), (d)	5	2	10
Proposed Sections 25.115, 25.130, 25.213	10	320	3200

Reporting requirements	No. of responses	Hours per response	Total
Proposed Section 25.133(b)	10	2	20
Total	41		8710

Note: These requirements will not all be triggered in the same year.

Needs and Uses: The Notice of Proposed Rulemaking solicits public comment on the Commission's proposals for rules and policies to govern the licensing and provision of service by voice and data mobile satellite service (MSS) systems in the 1610–1626.5/2483.5–2500 MHz band (1.6/2.4 GHz MSS).

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document.

Summary of Notice of Proposed Rulemaking

This Notice of Proposed Rulemaking represents the next step in the process of licensing the world's first commercial low-earth orbit satellites offering both voice and data mobile satellite services (MSS). These satellites are to operate in the 1610–1626.5/2483.5–2500 MHz frequency bands (1.6/2.4 GHz bands). The proposed systems are to provide a wide range of services, including cellular-like mobile services to users anywhere, telephone service to remote areas that are not linked to a communications network, position location services, search and rescue communications, disaster management communications, environmental monitoring, paging services, facsimile transmission services, cargo tracking, educational communications, and industrial monitoring. In addition to offering these services to users in the United States, the proposed low-earth orbit systems have the capability to extend these offerings throughout the world. This can potentially expand markets for U.S.-developed goods and services and to make a major contribution to U.S. global competitiveness. It also offers the potential for significant economic and social advances in developing countries by providing an "instant" telecommunications infrastructure at minimum cost.

Six applications to construct satellite systems in these frequency bands were filed by the cut-off date. Five proposed low-Earth orbit (LEO) systems. These were filed by Ellipsat Corporation, Motorola Satellite Communications Inc., Constellation Communications, Loral/Qualcomm Corporation, and TRW, Inc. The other application was filed by American Mobile Satellite Corporation. AMSC proposed to add the additional MSS frequencies to its geostationary satellite orbit (GSO) MSS system that was authorized in 1989. An international allocation for MSS in these frequency bands was made in February 1992; a domestic allocation was adopted in December 1993.

A negotiated rulemaking was undertaken from January through April 1993 to assist the Commission in establishing technical and operational rules to govern this new service (hereinafter 1.6/2.4 GHz MSS) and in developing an arrangement by which all six pending system proposals could be accommodated. Neither the Commission nor the applicants were able to fashion a spectrum sharing compromise that was acceptable to all. The Committee did, however, reach consensus regarding other major technical issues. After the Negotiated Rulemaking was concluded, the LEO applicants, in two new "partial settlement" groups, submitted two new sharing proposals they assert would permit all LEO applications to be granted. Both proposals are premised on excluding GSO systems from consideration for licensing in these frequency bands.

Licensing Procedure

If the applicants can develop or agree to an engineering solution or sharing scheme by which all proposed systems can be accommodated, the Commission generally adopts this approach if it is otherwise in the public interest. In situations where all applicants' proposed systems cannot be accommodated, the Commission must devise a method consistent with the public interest for choosing among them. In such cases, the Commission has, as an initial matter, imposed rigorous financial and technical requirements as a means of ensuring that those granted licenses are capable of expeditiously implementing state-of-the-art systems that will serve the public interest. If it is not possible to accommodate all qualified applicants, a further processing mechanism must be selected.

Qualification Requirements

As a means of encouraging new technology and of realizing the unique benefits that a global system can provide, the Commission proposes a LEO design requirement (proposed rule § 25.143(b)(2)(i)). It solicits comment on this proposal from both applicants and potential users, requesting that commenters address the potential for 1.6/2.4 GHz MSS systems to generate social, economic, and technical benefits, both domestically and globally, and the extent to which these benefits are realizable with LEO and GSO satellites. The Commission further proposes that systems be capable of serving all areas of the world, except for the polar regions, for at least 75% of each day. Specifically, the Commission proposes that satellite systems be designed so that at least one satellite is visible above the horizon at an elevation angle of at least 5° for at least 18 hours each day at latitudes less than 80° (proposed rule § 25.143(b)(2)(11)). To provide efficient and ubiquitous service to users throughout the United States, the Commission also proposes to require systems to be capable of providing continuous voice services to all areas of the United States (proposed rule § 25.143(b)(2)(iii)). That is, satellite systems must be designed so that at least one satellite is visible above the horizon at elevation angles of at least 5° at any given time in all areas of the United States.

Further, the Commission proposes strict financial qualification requirements identical to those in the domestic fixed-satellite service, where applications to implement space stations regularly exceed the number that can be accommodated (proposed § 25.143(b)(3)). Specifically, the Commission proposes that MSS applicants be required to provide evidence of current assets or irrevocably committed debt or equity financing sufficient to meet the estimated costs of constructing and launching all planned satellites and operating the system for one year. These requirements stem from the Commission's repeated experience that licensees without sufficient resources spend a significant amount of time attempting to raise the capital needed to finance a satellite system (here, $97 million to $2 billion), that these attempts often end unsuccessfully,

and that qualified fully-financed applicants may be blocked from entry during this several-year period.

All applicants will be given the opportunity to amend their applications to bring them into compliance with any final rules.

Processing Alternatives

While a sharing solution could not be developed during the Negotiated Rulemaking, the Commission believes that the recent LEO sharing proposals may form the basis for allowing it to proceed expeditiously with licensing. Both of the LEO applicants' proposals appear to allow up to five LEO systems to be accommodated in the 16.5 MHz of spectrum allocated to MSS in each transmission direction. This may be sufficient to allow all qualified applicants to be licensed.

The Commission proposes to assign licensees implementing code-division multiple access (CDMA) systems to 11.35 MHz of shared bandwidth at 1610–1621.35 MHz. It further proposes to assign a frequency division multiple access (FDMA)/time division access (TDMA) system to 5.15 MHz of dedicated bandwidth at 1621.35–1626.5 MHz. When a system is launched and read to begin operating, it will be permitted to operate over the entire assigned bandwidth for that technology. Any in-orbit CDMA system will be required to operate compatibly with any newly launched CDMA system. If only one CDMA system is implemented, the plan proposes to adjust the assignments for the system to 8.25 MHz at 1610–1618.25 MHz, leaving the freed spectrum available for possible reassignment to the FDMA licensee or for new entry. The Commission believes that 8.25 MHz should be ample to support a first-generation system and should provide some flexibility in coordinating the system internationally.

The plan includes the 1.6 GHz band only. While CDMA systems will use the 2.4 GHz band for downlink transmissions, an FDMA/TDMA system will use the 1.6 GHz band for both uplink and downlink transmissions. This may free some spectrum in the 2.4 GHz band and provide some flexibility in assigning specific downlink spectrum segments to CDMA licensees. For example, the Commission may decide to avoid licensing in those portions of the 2.4 GHz band that are especially susceptible to inter-service interference. Thus, while the Commission proposes to license CDMA operators to share the same amount of 2.4 GHz downlink spectrum as 1.6 GHz uplink spectrum, it does not propose specific frequencies for downlink operations at this time.

The commission requests comment on all aspects of its sharing proposal.

Other Alternatives if Mutual Exclusivity is Not Resolved

If the Commission's spectrum sharing plan, or some variation of it, does not permit the applications of all qualified applicants to be granted, the Commission must devise a procedure for choosing among those applicants. Possibilities include a comparable hearing, an auction, or a lottery. These alternatives are briefly discussed and, to expedite licensing if mutual exclusivity is not resolved, the Commission proposes structures for both an auction and a lottery.

The Commission's experience with comparative hearings has shown they usually are prolonged. Here, they would not only delay the provision of needed service to the United States public, but the delay could disadvantage the United States in coordinating a licensed system internationally. For these reasons, it may not be advisable to hold a comparative hearing.

The 1993 Budget Act gives the Commission the authority to employ competitive bidding procedures to select licensees from among two or more mutually exclusive applicants provided that certain criteria are met. The Commission believes it mutual exclusivity among the applicants cannot be resolved, an auction may be considered. Specifically, MSS licensees will be providing a commercial subscription-based service that will enable subscribers to transmit or receive MSS transmissions in the frequencies on which the MSS space stations will be licensed to operate. A competitive bidding system should permit a new service to be more rapidly introduced than would a comparative hearing. It should also allow the public to recover the value of the public spectrum resource being made available for commercial use. Further, it should encourage efficient use of the electromagnetic spectrum by encouraging applicants to bid on only the minimum amount of spectrum needed. The Commission recognizes that the statute also directs it to promote economic opportunity by disseminating licenses to a wide variety of licensees, including small and minority businesses. It requests comment on the manner in which this statutory obligation can be taken into account. The Commission also recognizes that an auction may have unintended consequences internationally by encouraging other countries to impose licensing costs on MSS systems. The Commission will carefully consider these concerns.

The Commission envisions that if an auction is employed, it will be conducted pursuant to the general framework adopted in its Competitive Bidding Implementation Proceeding (PP Docket No. 93–253). The Commission also proposes service-specific criteria. To maximize multiple entry and to encourage applicants to bid only for the minimum amount of spectrum they require, the Commission proposes to auction the 16.5 MHz of bandwidth in each transmission direction in eight paired 2.0625 MHz uplink and downlink segments. Based on the applicants' proposals, it appears that some MSS systems could be implemented with as little as 2 to 4 MHz of spectrum in each transmission direction. To afford licensees some flexibility, however, the Commission proposes to allow applicants to big successfully on up to four segments, for a total of 8.25 MHz of bandwidth in each transmission direction. Given the CDMA applicants' proposals to share spectrum, the Commission also questions whether it should permit successful bidders to agree to pool their spectrum and implement co-frequency systems.

Section 309(i) of the Budget Act also authorizes the use of a lottery to select from among one or more mutually exclusive applicants if the applications are accepted for filing before July 26, 1993. The Commission tentatively concludes that if mutual exclusivity cannot be resolved, the statutory requirements for a system of random selection are met. The Commission proposes to implement a lottery in a manner similar to its proposed auction framework. Specifically, eight 2.0625 MHz paired segments would be offered, and each selectee would be limited to four segments. The Commission questions whether it may be advisable to permit applicants to agree among themselves that they will implement co-frequency systems if one of them is chosen as the tentative selectee, allowing the Commission to grant licenses to all qualified applicants in the pool.

The Commission requests comment on all aspects of these alternative processing mechanisms.

Interservice Sharing

The radioastronomy service (RAS), the aeronautical radionavigation service (ARS), the instructional television fixed-service (ITFS), a variety of terrestrial services, and industrial, scientific and medical (ISM) equipment all operate in portions of the bands allocated to MSS

or in adjacent bands. The Committee studied the potential for interference between MSS and these services.

The Committee, which included an RAS representative, reached a consensus regarding MSS–RAS sharing. These recommendations, which form the basis for the Commission's proposed rules (§ 25.213(a)), establish fixed radius protection zones around the sixteen radio astronomy sites in the United States and set technical requirements for MSS downlink transmissions.

GLONASS, the Russian Global Navigation Satellite System, is operating in the 1610–1616 MHz band pursuant to International Radio Regulation RR 732. MSS stations may not cause harmful interference to or claim protection from stations operating under RR 732. During the Negotiated Rulemaking, the FAA indicated that it sought to use GLONASS in conjunction with the U.S. Global Positioning System (GPS) to provide aircraft ground approach and terminal communications. The Committee determined that MSS can coexist with GLONASS now, but if GLONASS were used as proposed by the FAA, the GLONASS/MSS interference problems at 1610–1616 MHz would be unresolvable. The Committee proposed that GLONASS be moved below the 1610 MHz band or, in the alternative, that U.S. reliance on GLONASS be lessened or eliminated. Both inter-agency and international negotiations have been initiated on this issue. We are encouraged that even if GLONASS is used for aircraft approach communications, it will be moved to frequencies below 1610 MHz. The Committee's proposed rules regarding e.i.r.p. limits pursuant to RR 731F and limitations on the use of MSS terminals on aircraft fall within accepted international standards and are set forth for comment (proposed § 25.213(c)).

The Committee also suggested a variety of solutions to the likely interference problems between MSS and other services, ranging from relocating existing licensees (e.g., "grandfathered" terrestrial stations operating in the 2483.5–2500 MHz band) to imposing stricter suppression requirements on transmissions in adjacent frequency bands (e.g., ITFS stations operating above 2500 MHz). However, these interests were not represented on the Committee, nor were the interests of ISM operators in the 2483.5–2500 MHz band. In these cases, the Commission does not believe that it can propose sharing rules without developing the record more fully. It therefore requests comment on the interference environment and possible solutions from affected operators.

Feeder Links

Since the fixed-satellite frequencies to be used for LEO MSS feeder links may also be used by GSO satellites, the Committee studied the sharing potential between LEO and GSO satellites. It concluded that sharing was feasible. The Committee also studied the obligations of the United States under RR 2613, which essentially requires a LEO operator to cease operations when unacceptable interference is cause to a GSO system. To afford LEO operators some protection, the Committee suggested that the U.S. seek international agreement that RR 2613 will not be invoked to require a LEO operator to terminate transmissions unless: (1) The affected administrations reach agreement as to a level of "accepted interference," (2) the LEO system is operating in excess of these levels, and (3) the excess interference is caused by the LEO satellite's failure to maintain sufficient angular separation between the satellites.

The Commission accepted the Committee's analysis that sharing between LEO feeder links and GSO systems is feasible with coordination. Further, the Commission agrees with the Committee's interpretation of RR 2613 and has already begun to explore, in international forums, issues relating to international coordination of and protection for LEO system feeder links.

Several applicants request feeder links in the 5/6 GHz frequency bands (C-band); other request the 20/30 GHz bands (Ka-band). The FAA opposes feeder links at 5 GHz, arguing that feeder link operations would be incompatible with its intended use of the band for new navigation aids. In a related Further Notice of Proposed Rulemaking regarding the Local Multipoint Distribution Service (CC Docket No. 92–297; FCC No. 94–12) 59 FR 7964, February 17. 1994 adopted the same day as this Notice, the Commission proposes to conduct a negotiated rulemaking to assist it in assigning the 27.5–30.0 GHz frequency band. It expects, in the context of that proceeding, to be able to identify sufficient spectrum to satisfy 1.6/2/4 GHz MSS operators. The Commission will, however, continue to pursue feeder links at 5 GHz and will allow applicants to incorporate these bands or other bands if they become available.

Intersatellite Links

Motorola's proposed system system includes intersatellite links in the 23.18–23.38 GHz band. The Committee concluded that Motorola's use of this band would be compatible with other operations in the band. The Committee's recommended rules regarding intersatellite service frequencies, coordination with government agencies, and sharing criteria are contained in proposed rule § 25.279.

Service Rules

Regulatory Classification

The 1993 Budget Act requires that the provision of space segment capacity directly to commercial mobile radio service (CMRS) providers be treated as common carriage. However, the Act gives the Commission the discretion to determine whether the provision of space segment capacity to CMRS providers should be treated as common carriage. (Most of the pending applicants propose to offer service through resellers.) The Commission tentatively concludes that 1.6/2.4 GHz MSS offering will, in most cases, fall within the definition of CMRS. The Commission requests comment on whether 1.6/2.4 GHz MSS space station licensees making satellite capacity available to CMRS providers should be required to operate as common carriers. Specifically, the Commission requests comment regarding whether there may be any public interest reasons to impose a legal compulsion upon 1.6/2.4 GHz MSS operators to serve the public indifferently, and whether a decision to exempt operators from common carriage requirements will allow them to engage in unreasonable or anticompetitive practices. The Commission recognizes that requiring common carriage may limit the amount of foreign participation in these inherently global systems, potentially impeding international coordination of these satellites. The Commission requests comment on the extent to which applicants are seeking foreign investment and the extent to which a common carriage requirement may impact their plans. The Commission also requests comment regarding the likelihood that 1.6/2.4 GHz MSS space station capacity will inherently be offered as an indifferent holding out to the public.

System License and License Term

The Commission also proposes licensing and service rules (proposed rules §§ 25.143(a), (c) and (d), 25.120(e), and 25.143(e) and (g)). These include blanket licensing for the space segment, a ten year operating license that begins to run when the first LEO satellite is launched, authority to replace older satellites as they are retired, a filing window for next-generation system proposals, system implementation

milestones, and an annual reporting requirement.

Mobile Earth Station Licensing

The Commission proposes to license gateway and tracking, telemetry and control (TT&C) stations as fixed-satellite earth stations under part 25 of the Commission's Rules. It also proposes a blanket licensing approach for mobile user transceivers under which a service vendor would hold the authorization for a specified number of technically identical units. The Commission's proposals for earth station licensing are contained in §§ 25.115(d) (applications for earth station authorizations); 25.130(b) (filing requirements for transmitting earth stations); 25.133(b) (period of construction; commencement of construction); 25.136 (operating provisions for earth station networks in the 1.6/2.4 GHz mobile-satellite service); and 25.213 (technical requirements for the 1.6/2.4 GHz mobile-satellite service). The Commission requests comment on these proposals.

To help maintain an interference-free environment, the Commission proposes to require an end user to obtain the authorization of the space station operator, either directly or through an authorized service vendor, before the user may transmit to that system. The Commission believes that this approach will facilitate roaming by international user while still protecting the domestic electromagnetic environment.

The regulatory treatment of earth station licensees will depend upon whether they will be providing CMRS, although the Commission expects that they will. Earth station licensees that provide CMRS must be regulated as common carriers.

International Coordination

All space segment licensees will be required to provide the Commission with all information required for international coordination. The Commission will follow the coordination procedures prescribed by the International Telecommunication Union and will work with the global community to promote mobile satellite services through the development of sharing techniques and the exploration of other technical issues. The Commission will also require United States licensees to meet all international obligations any national requirements imposed by other licensing administrations regarding operations within their borders. All decisions relating to implementing 1.6/2.4 GHz MSS within a country's territory will remain solely within that country's jurisdiction and control.

Procedural Matters

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed in accordance with Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding could affect the marketing opportunities of potential new service providers or equipment manufacturers, who may be small entities, in the voice mobile-satellite services. As this is a new service, the number of such small businesses is unknown. Public comment is requested on the initial regulatory flexibility analysis set out in full, in the Commission's complete decision.

Pursuant to applicable procedures set forth in §§ 1.415 and 1.1415 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 5, 1994, and reply comments on or before June 6, 1994. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ordering Clauses

Accordingly, pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), we hereby give notice of our intent to adopt the regulations and licensing policies described above.

It is ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 5 U.S.C. 601 *et seq.* (1981).

List of Subjects

47 CFR Part 25

Communications common carriers, Radio, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 94

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–5829 Filed 3–11–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21, Notice 12]

RIN 2127–AE99

Federal Motor Vehicle Safety Standards; Theft Protection

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Standard No. 114 currently requires automatic transmission vehicles with a "park" position on their transmission to have a key-locking system that prevents removal of the key unless the transmission is locked in "park" or becomes locked in "park" as the direct result of removing the key. In other words, under the first alternative, a vehicle must be designed so that the key cannot be removed when the transmission shift lever or other shifting mechanism is in any position other than "park." NHTSA is proposing to amend this provision to prevent key removal only when the shift lever or other shifting mechanism is fully placed in any designated shift position other than "park." This rulemaking action results from a petition submitted by Mazda. The agency believes that the proposed amendment would provide greater flexibility to manufacturers, and not have any measurable impact on safety.

DATES: Comments must be received on or before May 13, 1994. The proposed amendments would become effective 30 days after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Mr. Medlin's telephone number is (202) 366–5307.

SUPPLEMENTARY INFORMATION: On May 30, 1990, NHTSA amended Federal Motor Vehicle Safety Standard No. 114, *Theft Protection*, to protect against injuries to children caused by vehicle rollaway in vehicles with automatic

transmissions, where children were able to shift the transmission of a parked vehicle. 55 FR 21868. The amendment required automatic transmission vehicles with a "park" position to have a key-locking system that prevents removal of the key unless the transmission is locked in "park" or becomes locked in "park" as the direct result of removing the key. The amendment became effective on September 1, 1992.

In adopting the amendment, the agency explained that a study focusing on child-injuring rollaway accidents in Orange County, California demonstrated that injuries caused by rolling vehicles posed a significant safety problem. That study uncovered nine cases of children releasing the brake or moving the transmission shift lever, or both, causing a parked vehicle to roll and injure the child operating the controls or children near the vehicle. Even though two of the cases could be discounted for the purposes of the rulemaking in question because the vehicle's engine was running and there was insufficient information to draw conclusions about some other situations, the study did establish that the type of accident at issue was occurring.

NHTSA explained that although the then-current Standard No. 114 did not prohibit systems which permit the transmission lever to be shifted when the vehicle is parked and the ignition is locked, some manufacturers had voluntarily used a transmission shift lever lock that precludes this possibility. The agency stated that these transmission shift lever lock designs typically have two critical elements. First, the transmission shift lever lock requires the transmission shift lever to be in "park" before a person can remove the key. Second, the device also prevents shifting the transmission lever from "park" to another position once the key is removed.

NHTSA estimated that installation of the required technology in the cars and light trucks not voluntarily equipped by the rule's effective date would prevent an estimated 50 to 100 child-injuring rollaway accidents annually. The agency stated that these injuries could be prevented at a relatively low cost.

On February 2, 1993, Mazda submitted a petition for rulemaking requesting that the agency amend the provision added by the May 1990 final rule. That company claimed that an amendment was needed to clarify the requirement to make the compliance test procedure "objective."

Mazda stated that, in a December 12, 1992 letter, NHTSA had notified it of an apparent noncompliance with Standard No. 114. By way of explanation, the agency had sent Mazda a copy of a November 20, 1992 interpretation letter to Ford. That interpretation letter was a response to a Ford letter written to NHTSA concerning a compliance issue for certain of its keylocking systems which had been designed by Mazda. In its petition, Mazda stated that it was aware of at least five other manufacturers which had been informed of apparent noncompliances with that same provision of Standard No. 114.

In its November 20, 1992 interpretation letter to Ford, NHTSA rejected a request by that company to interpret Standard No. 114 to prevent key removal only when the transmission shift lever is in one of the available gear positioning detents other than "park," i.e., reverse, neutral, drive, first, or second, and not when the lever is at points between those detents. The agency stated that following: We cannot agree with your suggested interpretation, as it is inconsistent with the express language of S4.2.1. That section states that, with certain exceptions not at issue, the key-locking system must prevent removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key. Stated more simply, key removal must be prevented in all circumstances save those specified in S4.2.1. Neither the transmission nor the transmission shift lever is locked in "park" when the lever is between the gear selector positioning detents. Therefore, under section S4.2.1, key removal must be prevented in that situation, unless the transmission/transmission shift lower becomes locked in "park" as a direct result of removing the key.

In its petition, Mazda characterized the agency's interpretation as permitting "intentional mispositioning" of the transmission shift lever during compliance testing. That company argued that during the design and development of the vehicles which are the subject of the agency's December 1, 1992 letter, it never understood "intentional mispositioning" to be a reasonable and legitimate means for testing compliance with Standard No. 114. It also argued that even if it had such an understanding, it is not at all clear what kind of certification test procedure it would have used to assure that key removal could not occur in any possible situation.

Mazda also argued that it had reexamined the rulemaking record and found nothing to indicate that "intentional mispositioning" of the transmission shift lever was ever contemplated. In addition, Mazda alleged that even if this is now believed by NHTSA to be an appropriate aspect of the performance required by the standard, the absence of an objective test procedure for determining compliance with the standard results in a lack of objectivity and fails to satisfy the requirements of the National Traffic and Motor Vehicle Safety Act.

Mazda requested that Standard No. 114 be amended to incorporate a provision that it considers to set forth an objective performance requirement. The provision would specify testing with the transmission level in each detent position, and moving the lever from detent position to detent position using force levels specified by the manufacturer.

NHTSA rejects Mazda's claim that the existing provision in Standard No. 114 is non-objective. There is nothing subjective about a requirement that a key-locking system must prevent removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key. As discussed in the agency's interpretation letter, key removal must be prevented in all circumstances save those specified in S4.2.1.

While the agency rejects Mazda's objectivity argument, NHTSA does believe it is appropriate to address in rulemaking whether Standard No. 114 should be amended along the lines suggested by that company, albeit for different reasons. In the preamble to the May 1990 final rule, the agency stated that it believed the injuries in question could be prevented at a relatively low cost to manufacturers since most vehicles would already comply with the amendments. This belief was based on the fact that the vast majority of vehicles with automatic transmissions already had transmission locking systems or had already been scheduled to have newly designed systems installed. The agency assumed that all of those locking systems were or would be designed in a manner that would comply with the requirements. However, it now appears that some of these transmission locking systems do not comply with the requirements.

Based on agency testing of post-September 1, 1992 vehicles, the agency estimates that approximately 650,000 model year 1993 passenger cars and 18,000 light trucks do not meet the present requirement. For the final rule, the agency estimated the consumer cost of redesigning the transmission key-locking system to be $6.75 to $14.00 per

vehicle. Those are maximum figures that include both the situation where a complying system must be installed and the situation in which an existing system need only be adjusted in order to comply. In that respect, those figures likely overstate costs for this rulemaking, especially those applicable to an existing system needing only a minor adjustment. Additionally, some manufacturers have likely modified model year 1993 systems to comply with the existing requirements. Therefore, the actual numbers of passenger cars and light trucks that do not now meet the requirements are probably less than the estimates suggested above.

Since NHTSA did not anticipate the need for manufacturers to redesign a large number of transmission locking systems, the agency believes that it should consider whether it is appropriate to require such redesign. This is particularly true to the extent that the apparently noncomplying locking systems at issue result in essentially the same child-injury prevention safety benefits as would occur if the systems were redesigned to comply with the current requirement.

As indicated above, Standard No. 114 currently requires automatic transmission vehicles with a "park" position to have a key-locking system that prevents removal of the key unless the transmission is locked in "park" or becomes locked in "park" as the direct result of removing the key. In other words, under the first alternative, a vehicle must be designed so that the key cannot be removed when the transmission shift lever or other shifting mechanism is in any position other than "park." NHTSA is proposing to amend Standard No. 114 to instead require a key-locking system that prevents removal of the key: (1) Whenever the shift lever or other shifting mechanism is fully placed in the park position, unless the transmission and transmission shift mechanism are locked in park or become locked in "park" as the direct result of removing the key, and (2) whenever the shift lever or other shifting mechanism is fully placed in any designated shift position other than park, unless the transmission and transmission shift mechanism become locked in "park" as the direct result of removing the key. The standard would no longer address key removal when the transmission shift lever is between shift positions.

(NHTSA notes that, for nearly all current designs, the key cannot be removed if the transmission shift lever is in a detent other than park. However, electronic designs can be produced which permit the key to be removed while the transmission is in a position such as drive and then automatically move the shifting mechanism and transmission to park. Both the existing language of Standard No. 114 and the proposed language permit such designs.)

The basic rationale for limiting the key-removal requirement to situations where the transmission shift lever is in detent positions is that drivers are unlikely to attempt to remove the key when the transmission shift lever is between shift positions. As a practical matter, drivers are likely to either leave the transmission in the gear they had last used or attempt to put the transmission in park, before attempting key removal. The only chance for mispositioning is therefore in the latter situation, and the agency believes the chance for such mispositioning is small. Therefore, as a practical matter, when the agency decided to prohibit key removal in situations where the transmission was not in park, it was essentially addressing situations where the shift lever was in detent positions other than park. A more complete discussion of this rationale, which addresses the transmission designs currently at issue, is provided below.

Since the key-removal requirement would be limited to situations where the shift mechanism is fully placed in any designated shift position, it would be necessary for the agency to specify a means for determining whether the mechanism is in such position. Under the proposal, a vehicle would be considered to be in "park" when the transmission gear selection indicator shows that "park" has been selected and the vehicle will not roll away on an incline when the parking brake is disengaged. A vehicle would be considered to be in a drive gear when the transmission gear selection indicator shows that a drive gear has been selected and the vehicle can be moved under its own power. A vehicle would be considered to be in "neutral" if the transmission gear selection indicator shows that "neutral" has been selected, the vehicle is stopped, and activation of the accelerator pedal does not cause the vehicle to move.

As part of assessing the safety implications of the proposed amendment, it is necessary to evaluate the types of locking systems that would likely be produced under it. NHTSA believes that the most likely types of systems are ones like the Mazda-designed locking system that was the subject of the agency's November 1992 interpretation letter and the other locking systems that led the agency to issue letters concerning apparent noncompliances.

Ford and Mazda first advised the agency of a possible compliance issue concerning the Mazda-designed locking system in September 1992, shortly after the requirement at issue became effective. Ford advised that if key removal were attempted while the transmission shift lever on a large proportion of 1993 Escorts and Tracers was placed at various points between the "reverse" and "park" detents, the key could be removed while the selector lever was held short of engaging the "park" detent, and without the transmission becoming locked in park. Ford and Mazda also demonstrated these vehicles to NHTSA personnel. These personnel found that the transmission shift lever could be moved to a position where it appeared to be in "park," but where in fact the lever was not fully in the "park" position. After releasing the shift lever in this position, the personnel could remove the key without the transmission's becoming locked in park.

As indicated above, in its November 1992 interpretation letter, NHTSA rejected Ford's suggestion that the agency interpret Standard No. 114 to prevent key removal only when the transmission shift lever is in one of the available gear positioning detents other than "park." The agency stated that its interpretation was consistent with the agency's intent in promulgating S4.2.1, explaining: As discussed in several rulemaking notices, NHTSA amended Standard No. 114 to prevent vehicle rollaway caused by unattended children shifting the transmission lever in automatic transmission vehicles. If a driver were able to remove the key while the transmission or transmission shift lever were not locked in park, and if the transmission or transmission shift lever did not become locked in "park" as a result of removing the key, a child might later shift the transmission shift lever, thereby causing a vehicle rollaway. For this reason, we continue to believe that this amendment to Standard No. 114 meets the need for motor vehicle safety.

Subsequent to issuing the November 1992 interpretation letter, the agency conducted a number of compliance tests for Standard No. 114. As a result of these tests, the agency sent letters to Mazda, Ford, Honda, GM, Suzuki, and Hyundai, advising that, for certain of their vehicles, there was an apparent noncompliance with Standard No. 114's provision requiring that key removal be prevented unless the transmission or transmission shift lever is locked in park or becomes locked in park as a

direct result of removing the key. (Copies of the correspondence between NHTSA and these manufacturers, and the compliance test reports for the vehicles at issue, have been placed in the docket for this NPRM.)

For all of the vehicles for which tests showed apparent noncompliances, it was possible to remove the ignition key from the key-locking system when the transmission shift lever was in a position between "park" and "reverse," without the transmission becoming locked in "park" as a result of removing the key. The circumstances under which the ignition key could be removed when the transmission shift lever was between "park" and "reverse" varied. For some vehicles, the lever could simply be placed in a position between park and reverse, the hand that controlled it removed, and the key then removed. For certain of these vehicles, this happened only over a very small range of lever movement when the lever was very close to the park position and appeared to be in park, when in fact it was not fully in the park position. For other vehicles, this condition existed for about half of the range of lever movement between park and reverse.

For another set of vehicles, key removal without the transmission becoming locked in park only happened if one hand was kept on the transmission lever while the key was removed with the other hand, since the transmission lever would "spring" into park if the hand holding it between the two positions was removed.

NHTSA also notes that, while it was not a compliance issue before September 1, 1993, in some cases the transmission shift lever could be moved from the "park" position after the key was removed if the thumb button on the transmission shift lever was kept depressed while the shift lever was moved to the "park" position and the key was removed. (For a discussion of this issue, see October 21, 1992 interpretation letter to Transportation Research Center, Inc., which has been placed in the docket for this NPRM.)

With respect to the problem of child-induced rollaway, the safety consequences of permitting these types of apparently noncomplying systems are dependent on the likelihood that drivers would, in fact, remove the key in a manner that the transmission would not be locked in park after such removal. If the existing requirement is complied with, removal of the ignition key gives absolute assurance that the transmission is (or will become) locked in "park" and that vehicle movement will not occur as a result of the shift lever being moved. If the proposed requirement is complied with, removal of the ignition key while the transmission shift lever is fully placed in any designated shift position would give the same assurance that the transmission is (or will become) locked in "park," but the requirement would no longer prohibit key removal in the circumstance when the lever is between detents. NHTSA is not aware of any specific reported crashes that would be relevant to permitting these systems.

For some of the vehicles tested by the agency, deliberate action by the driver appears to be necessary in order to remove the key without the transmission becoming locked in "park." Such action is necessary where the driver must either hold the shift lever between "park" and "reverse" with one hand while removing the key with the other hand, or keep the thumb button depressed on the shift lever while removing the key. NHTSA tentatively concludes that there is no basis to believe that drivers would deliberately make such efforts to defeat the transmission shift lock. Therefore, the agency believes that permitting such systems would have no safety consequences, and that the existing requirement is unnecessarily design-restrictive with respect to these systems.

For other of the vehicles tested by the agency, it is possible that a driver might inadvertently remove the key without the transmission becoming locked in "park." This could happen, for example, if the driver moved the lever so that it appeared to be in "park" but was in fact short of the full "park" position.

However, in order for such systems to result in any adverse safety consequences related to child-induced rollaway, it would be necessary both for the driver to inadvertently fail to place the lever fully in the "park" position *and* for a child to then play with the lever and/or the parking brake in a way that creates a rollaway. NHTSA believes that either event would occur only very rarely and has tentatively concluded that the possibility of both events occurring together is minuscule. Therefore, the agency does not believe that it is necessary to address this remote possibility in a safety standard.

NHTSA notes that its safety standards are intended to address unreasonable safety risks and not all conceivable risks no matter how remote. The agency believes that its proposal is consistent with other actions that it has taken in this area. For example, while NHTSA decided in the May 1990 final rule to require transmission shift locks for automatic transmission vehicles, it also decided, based on a review of accident data, not to require such locks for manual transmission vehicles. This did not mean that there was no conceivable risk of child-induced rollaways for manual transmission vehicles, but instead that the risk was sufficiently small that the agency did not believe it was necessary to address in a safety standard. Similarly, in June 1990, NHTSA denied a petition for rulemaking submitted by Mr. W. A. Barr requesting that the agency issue requirements to address inadvertent vehicle movement associated with shifting automatic transmissions into "park," in part because of lack of evidence that the extent of the alleged problem was great enough to warrant Federal intervention.

NHTSA is also proposing to amend the Purpose and Scope section of Standard No. 114 to clarify that the purpose of the requirements at issue is to reduce the incidence of crashes resulting from the rollaway of parked vehicles with automatic transmissions as a result of children moving the shift mechanism out of the "park" position. That section currently indicates that the purpose of the requirements is to reduce the incidence of crashes resulting from rollaway of parked vehicles.

NHTSA contemplates making the proposed amendments effective 30 days after publication of a final rule. The agency tentatively concludes that there is good cause for such an effective date, since the amendments would impose no new requirements but instead provide additional flexibility to manufacturers with no measurable impact on safety.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be not "significant" under either. As explained above, the proposed amendments would impose no new requirements but instead provide additional flexibility to manufacturers, with respect to transmission shift lock designs, with no measurable impact on safety. Also as stated above, the agency estimates the annual consumer cost savings of adopting the proposed amendment to be a maximum of $6.75 to $14.00 per affected vehicle. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this proposal, if adopted as

a final rule, would not have a significant economic impact on a substantial number of small entities. The vehicle manufacturers affected by the proposed requirements would not typically qualify as small businesses. Further, since no price changes should be associated with this proposal, small businesses, small organizations and small governmental entities would not be affected in their capacity as purchasers of new vehicles if this proposal were adopted in a final rule.

National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act and determined that a final rule adopting this proposal would not have a significant impact on the quality of human life.

Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

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

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR 571.114, *Theft Protection*, to read as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

§ 571.114 [Amended]

2. Section 571.114 would be amended by revising S1 and S4.2.1 to read as follows:

§ 571.114 Standard No. 114; Theft protection.

S1 *Purpose and Scope*. This standard specifies requirements primarily for theft protection to reduce the incidence of crashes resulting from unauthorized operation of a motor vehicle. It also specifies requirements to reduce the incidence of crashes resulting from the rollaway of parked vehicles with automatic transmissions as a result of children moving the shift mechanism out of the "park" position.

* * * * *

S4.2.1(a) Except as provided in S4.2.2(a) and (b), the key-locking system required by S4.2 in each vehicle which has an automatic transmission with a "park" position shall prevent removal of the key—

(1) Whenever the shift lever or other shifting mechanism is fully placed in any designated shift position other than park, unless the transmission and transmission shift mechanism become locked in "park" as the direct result of removing the key, and

(2) Whenever the shift lever or other shifting mechanism is fully placed in the park position, unless the transmission and transmission shift mechanism are locked in park or become locked in "park" as the direct result of removing the key.

(b) The following procedure is used for determining whether the shift lever or other shifting mechanism is fully placed in a designated position. The lever or other shifting mechanism is moved to a designated position and physical contact with the lever or other shifting mechanism is ended. The lever or other shifting mechanism is considered to be fully placed in the "park" position if the transmission gear selection indicator shows that "park" has been selected and the vehicle will not roll away on a 10 percent grade when the parking brake is disengaged. The lever or other shifting mechanism is considered to be fully placed in the "neutral" position if the "neutral" position is selected, the transmission gear selection indicator shows that "neutral" has been selected, and activation of the accelerator pedal does not cause the vehicle to move. The lever or other shifting mechanism is considered to be fully placed in a forward or reverse drive position if the transmission gear selection indicator shows that a drive position has been selected and the vehicle can be driven under its own power. For purposes of S4.2.1, rollaway is movement of a vehicle greater than 100 mm.

* * * * *

Issued on March 4, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94-5487 Filed 3-11-94; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition To Delist Seven Texas Karst Invertebrates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to remove seven species of invertebrates that occur in karst topography in Travis and Williamson counties, Texas, from the List of Endangered and Threatened Wildlife and Plants. The Service determines that the petition does not present substantial scientific or commercial information indicating that delisting the Coffin Cave mold beetle (*Batrisodes texanus*), the Tooth Cave spider (*Neoleptoneta myopica*), the Tooth Cave ground beetle (*Rhadine persephone*), the Tooth Cave pseudoscorpion (*Tartarocreagris texana*), the Kretschmarr Cave mold beetle (*Texamaurops reddelli*), the Bee Creek Cave harvestman (*Texella reddelli*), and the Bone Cave harvestman (*Texella reyesi*) may be warranted.

DATES: The finding announced in this notice was made on March 7, 1994. Comments and information related to this petition finding may be submitted until further notice.

ADDRESSES: Information, comments, or questions may be submitted to the State Administrator, U.S. Fish and Wildlife Service, Ecological Services Field Office, 611 East 6th Street, room 407, Austin, Texas 78701. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ruth Stanford, Ecologist, at the above address (512/482-5436).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S C. 1531 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

Judge John C. Doerfler, representing the Williamson County Commissioners Court, submitted a petition to the Service to delist six species of endangered karst invertebrates in Travis and Williamson counties, Texas. The petition was dated June 7, 1993, and received by the Service on that date. On June 16, 1993, the Service received a letter from attorney J.B. Ruhl on behalf of the petitioners, clarifying the intent of the petition to incorporate recent taxonomic revisions and the taxonomic reevaluation of five listed karst invertebrate species as seven species.

The final rule listing the Tooth Cave pseudoscorpion (*Microgreagris texana*), the Tooth Cave spider (*Leptoneta myopica*), the Bee Creek Cave harvestman (*Texella reddelli*), the Tooth Cave ground beetle (*Rhadine persephone*), and the Kretschmarr Cave mold beetle (*Texamaurops reddelli*) as endangered species was published in the **Federal Register** on September 16, 1988 (53 FR 36029) (final rule). Subsequent taxonomic revisions have formalized genus reassignments for *M. texana* and *L. myopica* and established that *Texella reddelli* and *Texamaurops reddelli* each actually comprise two species. *Microcreagris texana* has been reassigned to *Tartarocreagris texana* (Muchmore 1992). *Leptoneta myopica* has been formally reassigned to *Neoleptoneta myopica* following Brignoli (1977) and Platnick (1986). *Texella reddelli* has been found to comprise two species, *Texella reddelli* (Bee Creek Cave harvestman) and *Texella reyesi* (Bone Cave harvestman) (Ubick and Briggs 1992). *Texamaurops reddelli* has been found to comprise two species, *Texamaurops reddelli* (Kretschmarr Cave mold beetle) and *Batrisodes texanus* (Coffin Cave mold beetle) (Chandler 1992). A **Federal Register** notice announcing the latter two revisions was published on August 18, 1993 (58 FR 43818).

Several caves in Travis County contain more than one of the endangered karst invertebrates. These include Tooth Cave, Amber Cave, Gallifer Cave, Kretschmarr Cave, and Kretschmarr Double Pit. These caves and others are protected under the stewardship of the Texas System of Natural Laboratories (TSNL). In addition, some other caves are in preserves regulated by the Cities of Austin and Georgetown. (For further discussion, see Factor D, "The inadequacy of existing regulatory mechanisms," below.) However, many of the caves containing endangered karst invertebrates currently have no protection other than that provided by the Act.

The petitioners point out that, since publication of the final rule, new locations have been discovered for several of the species, most notably the Tooth Cave ground beetle and the Bone Cave harvestman. The Tooth Cave ground beetle was known from two caves about 2.5 kilometers (km) (1.5 miles (mi)) apart in Travis County, Texas, at the time of listing. It is currently known from about 27 locations (24 confirmed, 3 tentative) along a 14-km (9-mi) distance in Travis and Williamson counties, Texas. Only 10 of these caves are provided any degree of local protection (James Reddell, Texas Memorial Museum, *in litt.*, 1993). Seven of these caves are located in the small TSNL preserves discussed above, one is in a small preserve owned by the City of Austin, and two are in small preserves acquired as mitigation for a development project.

The Bone Cave harvestman was not described at the time of the original listing, but was thought to be the same species as the Bee Creek Cave harvestman. The Bone Cave harvestman is currently known from about 69 locations (60 confirmed, 9 tentative) along a 40-km (25-mi) distance in Travis and Williamson counties, Texas. Of the 69 caves recorded as locations of the Bone Cave harvestman, only 9 are provided any local protection. Three are TSNL caves, two are in City of Austin preserves, two are in City of Georgetown preserves, and two were acquired as mitigation for a development project. In addition, this species exhibits considerable geographical variation and loss of a significant number of locations within a part of its range would result in a loss of genetic diversity within the species (Reddell, *in litt.*, 1993). Few caves are provided any protection other than that now provided by the Act and their distribution is disjunct and at the extremes of the species' range.

The number of caves in which the other five endangered karst invertebrates have been found or tentatively identified has increased slightly for three of the species, remained the same for another species

(although its range has decreased), and decreased for the fifth species.

The Tooth Cave pseudoscorpion, known at the time of listing from Tooth and Amber caves, within a 1.3-km (0.8-mi) radius in Travis County, remains confirmed only from the two original caves. The species has been tentatively identified from Stovepipe Cave and Kretschmarr Double Pit, lying within the original range. Stovepipe Cave is located on private property that the City of Austin has approved for development. The three remaining caves are located in the small TSNL preserves discussed above.

The Tooth Cave spider, known at the time of listing only from Tooth Cave, is now also confirmed at New Comanche Trail Cave and tentatively identified from Gallifer and Stovepipe caves, all lying along a 4.5-km (3-mi) distance in northwest Travis County, Texas. Tooth and Gallifer caves lie within small TSNL preserves, Stovepipe Cave is on private property approved for development, and New Comanche Trail Cave is not protected and may be adversely impacted by a planned realignment of New Comanche Trail Road.

The Coffin Cave mold beetle was not described at the time of listing, but was thought to belong to the same species as the Kretschmarr Cave mold beetle. The Coffin Cave mold beetle is currently confirmed from four caves and tentatively identified from one cave, all occurring along a 17-km (10-mi) distance in Williamson County, Texas. Off Campus and Sierra Vista caves are located in a small preserve surrounded by a subdivision; the adequacy of the preserve for long-term protection of the species at those sites is uncertain. On Campus Cave lies on a high school campus. The status of the type locality (Coffin Cave) is unknown; recent attempts to locate the species in Inner Space Cavern were unsuccessful (Reddell, *in litt.*, 1993).

The Kretschmarr Cave mold beetle was believed to occur in four caves in Travis and Williamson counties at the time of listing and is currently known from four caves in Travis County. A specimen from Coffin Cave was redescribed as the Coffin Cave mold beetle and a new location for the Kretschmarr Cave mold beetle was discovered at Stovepipe Cave. The range of the Kretschmarr Cave mold beetle has consequently decreased since the original listing from a 45-km (28-mi) distance in Travis and Williamson counties to a 2-km (1.2-mi) distance in Travis County. Stovepipe Cave lies within a proposed subdivision and the other three locations for the species, Tooth, Amber, and Kretschmarr caves, lie within small TSNL preserves.

The Bee Creek Cave harvestman was believed to occur in five caves in Travis and Williamson counties at the time of listing. It is currently confirmed at four caves and tentatively identified from two caves. The distribution of the Bee Creek Cave harvestman consists of two disjunct areas, one about 5 km (3 mi) long and the other about 8 km (5 mi) in length, with a distance of about 28 km (17 mi) between the northernmost and southernmost localities, all of which lie in Travis County. Little Bee Creek Cave, Jester Estates Cave, and Kretschmarr Double Pit (a TSNL cave) are located in small preserve areas. Bandit Cave is maintained as a small preserve, although attempts to relocate the Bee Creek Cave harvestman in the cave in 1966, 1988, and 1989 were unsuccessful (Reddell, *in litt.*, 1993). Cave Y is located in a proposed development area; the species' status in Bee Creek Cave is unknown since it has not been possible to obtain permission to inspect the cave since 1975 (Reddell, *in litt.*, 1993).

None of these invertebrates are known to occur in large numbers (William Elliott, Texas Memorial Museum, *in litt.*, 1993; Reddell, *in litt.* and pers. comm., 1993). The fact that several of the species are known to occur at several dozen locations should not be interpreted to mean that those species are abundant. (See Factor A, "The present or threatened destruction, modification, or curtailment of its habitat or range," below).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to or removing species from the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the seven karst invertebrates are re-evaluated in light of new information available to the Service and information presented in the petition and are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Service determined that the primary threat to these species comes from loss of habitat due to ongoing and proposed development activities (final rule). The proximity of the caves inhabited by these species to the City of Austin makes them vulnerable to continuing expansion of the Austin metropolitan area. Threats to specific caves occupied by these species were addressed in the final rule (53 FR 36029).

The known ranges of the Tooth Cave pseudoscorpion, the Tooth Cave spider, the Kretschmarr Cave mold beetle, the Coffin Cave mold beetle, and the Bee Creek Cave harvestman have not appreciably increased since the original listing. Although the range and number of known locations for the Tooth Cave ground beetle and the Bone Cave harvestman have increased since the original listing, the degree of threat of habitat destruction or modification remains significant, and may have increased, throughout the range of each species.

Searches for karst features and karst fauna surveys have become more frequent since the listing, as developers and landowners have sought to comply with the Act. Many of the new locations of these karst invertebrates have been discovered as a result of biological surveys conducted prior to development or sale of land; consequently, newly discovered locations are frequently threatened by habitat destruction and other threats associated with development. The recent revitalization of the real estate market in the Austin metropolitan area has maintained and intensified the threat of karst invertebrate habitat destruction and other associated threats.

The petitioners present a list of caves with endangered species that have been subject to some degree of disturbance. They cite these cases as demonstrating that activities such as dumping, vandalism, and sealing of cave entrances do not actually threaten the karst invertebrates. Reddell (in litt., 1993) counters that, in most of these cases, the disturbance to the cave environment is recent in origin, minor in scale, and/or generally restricted to the immediate entrance zone. The Service concurs with Reddell and believes that these examples do not present convincing evidence that dumping, vandalism, and sealing entrances are harmless to the karst invertebrates. In most cases, not enough time has elapsed since the disturbance to detect an effect on the karst invertebrates. The Service agrees with the petitioners that there is little quantitative data available on the direct effects of trash dumping, vandalism, sealing, and other disturbances on the karst invertebrates. However, there is substantial qualitative evidence indicating that the threats to the karst invertebrates discussed in the final rule and in this finding are real, significant, and ongoing. Reddell (*in litt.*, 1993) and

Elliott (*in litt.*, 1993) both cite examples in which trash dumping, vandalism, and over-visitation have resulted in decreased occurrence of karst invertebrates in affected areas.

The petitioners cite the work of Crawford (1981) and Veni (1992) as evidence that the caves where the karst invertebrates occur are not isolated "islands" of special habitat and that the invertebrates likely occur and move throughout the karst in the interstitial spaces. In this interpretation, the petitioners misunderstand the Service's use of the "island" analogy in the final rule. The final rule listing the karst invertebrates stated that the caves containing the karst invertebrates "occur in isolated 'islands' " of the Edwards limestone formation that were separated from one another when stream channels cut through overlying limestone to lower rock layers" (53 FR 36029). The Service applied the island analogy to the distinct, geologically isolated karst areas (referred to in the Draft Recovery Plan (U.S. Fish and Wildlife Service 1993) and hereinafter as "regions") within which the caves containing the karst invertebrates have formed, not to the individual cave systems. Veni's work (1992) delineates these karst regions and identifies areas "having a high probability of suitable habitat for endangered or other endemic invertebrate cave fauna." A letter from Veni in response to the petition clarifies that he did not intend that his work be interpreted to mean that there are thousands of acres of habitat suitable for the karst invertebrates (George Veni, Veni and Associates, *in litt.*, 1993).

While the Service believes that the karst invertebrates are likely to use interstitial spaces in the karst, particularly in areas with some surface nutrient input to the karst system, the Service does not believe that this suitable habitat exists uniformly within the larger karst regions (as delineated by Veni (1992) and described by the Service in the final rule as "islands"). Finally, Crawford (1981) focuses on aquatic karst species. In the aquatic karst ecosystems upon which Crawford based his ideas, continuously flowing water through caves and the interstitium may provide more continuous habitat for aquatic subterranean species and thus provide more opportunity for aquatic invertebrates to inhabit interstitial spaces. Given that the Travis and Williamson County karst invertebrates are exclusively terrestrial and that habitat for terrestrial species is more patchy and distributed according to the occurrence of food, cover, and moisture, Crawford's ideas may not apply to these invertebrates.

The petitioners cite the work of Curl (1966), Juberthei and Delay (1981), and Culver (1986) as evidence that most caves have no entrance, that caves are rare even in karst areas, and that caves may be less favorable environments for karst invertebrates than interstitial spaces. They cite these papers as evidence that habitat for terrestrial troglobites (obligate cave-dwelling species) is ubiquitous in karst areas and that the Texas karst invertebrates exist throughout the karst even where there are no caves or openings to the surface. Culver (1986) says that "the number of caves (defined as cavities large enough for human access) more or less corresponds to the number of habitable patches for terrestrial troglobites." Reddell (*in litt.*, 1993) and Peck (1976) believe that cave entrances provide an important avenue of nutrient input for cave fauna. Reddell (*in litt.*, 1993) also cites several examples in which subsurface voids having no natural entrance were encountered during construction activities and found not to contain karst invertebrates. Similarly, clay-filled sinkholes with no openings to the surface rarely contain karst invertebrates, whereas caves and sinkholes that are sealed to human access by soil or rock fill or with openings to the surface that allow access by cave crickets or small mammals (and associated nutrients) more often contain karst fauna (Reddell, *in litt.*, 1993).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

No threat from overutilization of these species is known to exist at this time. Collection for scientific or educational purposes could become a threat if specific localities become widely known.

C. Disease or Predation

At the time of listing, predation by and competition with non-native species introduced in association with human habitation was considered a potential threat to the karst invertebrates. Human activities facilitate movement of non-native competitors and predators such as sowbugs, cockroaches, and fire ants into an area. Buildings, lawns, roadways, and landscaped areas provide habitat from which these species can disperse. The relative accessibility of the shallow caves in Travis and Williamson counties makes them especially vulnerable to invasion by non-native species.

Fire ants are a major threat to the karst invertebrates. The significance of this threat and the difficulty of controlling fire ants should not be underestimated. Fire ants are voracious predators and there is evidence that overall arthropod diversity drops in their presence (Vinson and Sorensen 1986, Porter and Savignano 1990). Reddell (*in litt.*, 1993) lists at least nine cave-inhabiting species that he has observed being preyed upon by fire ants. Elliott (1992) cites other examples and notes that fire ant activity has increased dramatically in Central Texas since 1989.

Although the threat posed by fire ants was not recognized at the time these species were listed, the magnitude of the threat the ants pose has subsequently become quite apparent. Even in the unlikely event that fire ants do not prey upon the listed species, their presence in and around caves could have a drastic detrimental effect on the cave ecosystem through loss of species, inside the cave and out, that provide nutrient input and critical links in the food chain.

Controlling fire ants once they have invaded the cave and vicinity is difficult. Chemical control methods have some effectiveness but the effect of these agents on non-target species is unclear. Consequently, using chemicals to control fire ants in and near caves is not advisable. Currently, the Service recommends only boiling water treatment for control of fire ant colonies near caves inhabited by listed invertebrates. This method is labor-intensive and only moderately effective. Presently, the burden of carrying out such practices is not a designated or mandated duty of any agency, individual, or organization. This type of control will likely be needed indefinitely or until a long-term method of fire ant control is developed.

D. The Inadequacy of Existing Regulatory Mechanisms

Invertebrates are not included on the Texas Parks and Wildlife Department's list of threatened and endangered species and are provided no protection by the State; nor do the Department regulations contain provisions for protecting habitat of any listed species.

As previously discussed, some of the caves containing endangered invertebrates are in TSNL and city preserves. A small preserve surrounds the entrance to each of these caves. However, these preserves encompass only a fraction of the surface drainage area that provides input of nutrients and moisture into the caves. The entire surface and subsurface drainage area is the minimum area believed necessary to provide adequate long-term protection for cave ecosystems. The preserves around these caves are not sufficient to counter nutrient depletion and prevent

pollution, should the surrounding areas be developed.

Some of the TSNL caves are under temporary deed to TSNL and may be sold at the owner's discretion (U.S. Fish and Wildlife Service 1993). In addition, City of Austin cave protection laws do not apply in most cases, since the great majority of these caves lie outside the city limits.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The Service is unaware of other threats to these species beyond those discussed under factors A–D (above). As noted under Factor A, the Bone Cave harvestman exhibits considerable geographical variation. Loss of a number of locations within any one part of its range would result in a loss of genetic diversity for the species (Reddell, *in litt.*, 1993). The Tooth Cave pseudoscorpion, Tooth Cave spider, Coffin Cave and Kretschmarr Cave mold beetles, and Bee Creek Cave harvestman are each known from fewer than 10 locations (4, 4, 5, 4, and 6 locations respectively, including unconfirmed identifications). Therefore, the loss of even a single location would represent a significant loss of genetic diversity for any of those species. Lack of genetic diversity can accelerate the decline or extinction of rare species.

Conclusion

As discussed in the final rule, these species remain extremely vulnerable to losses. For the Tooth Cave pseudoscorpion, the Tooth Cave spider, the Kretschmarr Cave mold beetle, the Coffin Cave mold beetle, and the Bee Creek Cave harvestman, neither the range nor the number of confirmed localities within the range has expanded significantly since the original listing. The Tooth cave ground beetle and the Bone Cave harvestman occur in more locations and are more widespread than was originally believed, but the expansion of the overall range is not significant and the majority of caves in which these species occur are subject to one or more of the threats discussed above (Reddell, *in litt.*, 1993).

The Service recently released a Draft Recovery Plan for the karst invertebrates (U.S. Fish and Wildlife Service 1993). That document details recovery actions and criteria that, when met, may result in reclassification or delisting of the endangered karst invertebrates. Continued efforts to locate new inhabited caves, to implement habitat conservation measures, and to control the threat of fire ants could bring the karst invertebrates to the point where protection under the Act is no longer necessary.

The Service has carefully assessed the information presented in the petition, as well as the best and most current scientific and commercial information, in determining that the petition does not present substantial scientific and commercial information indicating that delisting of any of the seven karst invertebrates may be warranted. These species continue to require the protection provided by the Act because of their extremely small, vulnerable, and limited habitats located within an area that is experiencing continued pressures from economic and population growth.

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Author

The primary author of this notice is Ruth Stanford (See **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: March 7, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–5854 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 49
Monday, March 14, 1994

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. 94-011-1]

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 five 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 requested 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 No.	Applicant	Date received	Organisms	Field test location
94-038-01	Calgene, Incorporated	02-07-94	Canola plants genetically engineered to express oil modification genes.	North Dakota.
94-039-01	Petoseed Company, Incorporated.	02-08-94	Squash plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	California.
94-039-02, renewal of permit 93-063-05, issued on 05-26-93.	American Crystal Sugar Company.	02-08-94	Sugar beet plants genetically engineered to express two genes for tolerance to the herbicide glyphosate.	Minnesota, North Dakota.
94-039-03	Cornell University	02-08-94	Apple trees genetically engineered to express resistance to fire blight.	New York.
94-039-04, renewal of permit 90-088-01, issued on 07-11-90.	Upjohn Company	04-06-93	Cantaloupe and squash plants genetically engineered to express resistance to cucumber mosaic virus, papaya ringspot virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	California, Georgia, Michigan.

Done in Washington, DC, this 8th day of March 1994.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-5874 Filed 3-11-94; 8:45 am]

BILLING CODE 3410-34-P

Federal Grain Inspection Service

Pilot Programs Allowing More Than One Official Agency To Provide Official Services Within A Single Geographic Area

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice With Comment Period.

SUMMARY: Amendments in 1993 changed the United States Grain Standards Act, as amended (Act). One of these changes provides that the Federal Grain Inspection Service (FGIS) may conduct pilot programs allowing more than one official agency to provide official services within a single geographic area. FGIS is announcing its intent to conduct one or more such pilot programs. FGIS is requesting comments on the specific pilot programs described below, and FGIS also is requesting suggestions for other possible pilot programs in lieu of or in addition to those listed below.

DATES: Comments and suggestions must be postmarked, or sent by telecopier (FAX) or electronic mail by April 22, 1994.

ADDRESSES: Comments and suggestions must be submitted in writing to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36CPDIR]. ATTMAIL and FTS2000MAIL users may respond to !A36CPDIR. Telecopier (FAX) users may send comments and suggestions to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. All comments and suggestions received will be made available for public inspection during regular business hours at the above address located at 1400 Independence Avenue, S.W.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION: Sections 7(f) and 7A of the Act were amended by the U.S. Grain Standards Act Amendments of 1993 (Public Law 103–156) on November 24, 1993, to authorize FGIS' Administrator to conduct pilot programs allowing more than one official agency to provide official services within a single geographic area without undermining the declared policy of the Act. The purpose of the pilot programs is to evaluate the impact of allowing more than one official agency to provide official services within a single geographic area. FGIS is considering several possible pilot programs and may conduct one or more pilot programs. Official agencies selected by FGIS to participate in a pilot program would be allowed to provide official services in specified areas during the test period, and these agencies would provide FGIS with information on such official services. Following the pilot programs, FGIS would evaluate the impact of allowing more than one official agency to provide service within a single geographic area. FGIS is considering the following possible pilot programs and may select one or more of these or other suggested pilot programs for a test.

1. Barges on selected rivers or portions of rivers as defined by FGIS. Agencies would be allowed to provide official services for barges at these locations in addition to the agency already designated to serve these locations.

2. Exceptions. Agencies having exceptions to their assigned geographic areas would be allowed to provide official services at these specified locations in addition to the official agency already designated to serve these points.

3. Commercial inspection services. Agencies would be allowed to provide official commercial inspection services outside their assigned geographic areas.

4. Submitted samples. Agencies would be allowed to enter another agency's assigned area to pick up submitted samples.

5. Timeliness of service. If an official agency can not provide the requested services within 12 hours of the request, the applicant may request such services from another official agency.

Commenters are encouraged to submit reasons and pertinent data for support or objection to the pilot programs described above. FGIS is also requesting suggestions regarding other possible pilot programs in addition to or in lieu of those listed above. All comments and suggestions must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in determining which pilot programs to conduct. FGIS will publish notice of any pilot programs to be conducted.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 3, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–5805 Filed 3–11–94; 8:45 am]

BILLING CODE 3410–EN–F

Food and Nutrition Service

RIN 0584–AB61

Food Stamp Program: Maximum Allotments for Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General Notice

SUMMARY: By this notice, the Department of Agriculture is updating the maximum food stamp allotments for participating households in Alaska, Hawaii, Guam, and the Virgin Islands. These annual adjustments, required by law, take into account changes in the cost of food and statutory adjustments.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Publication

As required by law, State agencies implemented this action on October 1, 1993 based on advance notice of the new amounts. Based on regulations published at 47 FR 46485 (October 19, 1982) annual statutory adjustments to the maximum allotment levels, income eligibility standards, and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12866

The Food and Nutrition Service is issuing this proposed rule in conformance with Executive Order 12866, and has determined that it is not a "significant regulatory action." Based on information compiled by the Department, it has been determined that this action: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

William E. Ludwig, the Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through increases in food stamp benefits issued to participating households. However, this money will be distributed among the nation's food vendors as the food stamps are used by households, so the

effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to review by the Office of Management and Budget.

Background

Thrifty Food Plan (TFP) and Allotments

The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan suggests amounts of food for men, women, and children of different ages, and it meets most dietary standards. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

TFPs for Alaska and Hawaii are based upon an adjusted average for the six-month period that ends with June 1993. Since the Bureau of Labor Statistics (the source of food price data) no longer publishes monthly information to compute Alaska and Hawaii TFPs, the adjusted average provides a proxy for actual June 1993 TFP costs. The adjusted average is equal to January–June 1993 TFP costs for Alaska and Hawaii increased by the average percentage difference between the cost of the TFP in Alaska and Hawaii in June and the January–June average from 1976 through 1986 (a 1.53 percent increase over January–June costs in Alaska and a 1.82 percent increase in Hawaii).

For the period January through June 1993, the average cost of the TFP was $467.70 in Alaska and $596 in Hawaii. The proxies for actual June 1993 TFP costs were $474.86 in Alaska and $606.85 in Hawaii. The June 1993 cost of the TFP was $587.70 in Guam and $469.10 in the Virgin islands.

The TFP is also the basis for establishing food stamp allotments. Food stamp allotments are adjusted periodically to reflect changes in food cost levels. Section 3(o)(11) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2012(o)(11)) provides for an adjustment on October 1, 1993, based upon 103 percent of the June 1993 cost of the TFP for a family of four persons consisting of a man and woman ages 20–50 and children ages 6–8 and 9–11.

The maximum food stamp benefit or allotment is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the maximum allotment for their household size by 30% of the household's net income. To obtain the maximum food stamp allotment for each household size, the TFP costs for the four-person household were increased by 3 percent, divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar.

Pursuant to section 3(o)(3) of the Food Stamp Act (7 U.S.C. 2012(o)(3)), maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and D.C., so they are based upon the lower of their respective TFPs or the TFP for rural II Alaska. In addition, the urban Alaska allotment is the higher of the allotment that was in effect in urban areas on October 1, 1985 or 100.79 percent of the adjusted Anchorage TFP (see 50 FR 18456, dated May 1, 1984, and 51 FR 16281, dated May 2, 1986).

According to regulations published at 51 FR 16281, on May 2, 1986, the allotment for rural I areas is the higher of the allotment that was in effect in each rural I area on October 1, 1985 or 128.52 percent of the Anchorage TFP (as adjusted). The rural II allotment is 156.42 percent of the adjusted Anchorage TFP (Alaska TFP). For further information concerning the allotments for urban Alaska, rural I Alaska, and rural II Alaska, see 51 FR 16281, dated May 2, 1986.

The following table shows new allotments for urban Alaska, rural I Alaska, rural II Alaska, Hawaii, Guam, and the Virgin Islands.

MAXIMUM ALLOTMENT AMOUNTS [1]—OCTOBER 1993, S ADJUSTED

Household size	Urban Alaska [2]	Rural I Alaska [3]	Rural II Alaska [4]	Hawaii	Guam [5]	Virgin Islands [5]
1	$147	$188	$229	$187	$166	$144
2	271	345	420	343	304	265
3	388	495	602	492	436	380
4	492	628	765	625	553	483
5	585	746	908	742	657	573
6	702	895	1,090	890	789	688
7	776	990	1,204	984	872	760
8	887	1,131	1,377	1,125	997	869
Each additional member	+111	+141	+172	+141	+125	+109

[1] Adjusted to reflect the cost of food in June 1993, adjustments for each household size, economies of scale, a 1.03 percent increase in the TFP and rounding.
[2] These levels are 100.79 percent of the Anchorage TFP, as adjusted.
[3] These levels are 128.52 percent of the Anchorage TFP, as adjusted.
[4] These levels are 156.42 percent higher than the Anchorage TFP, as adjusted.
[5] Adjusted to reflect changes in the cost of food in the 48 States and D.C., which correlate with price changes in these areas. Maximum allotments in these areas cannot exceed those in rural II Alaska.

Maximum allotments for the 48 States and D.C. were published in a separate notice in the **Federal Register**. These adjustments were made sooner than the adjustments for Alaska, Hawaii, Guam and the Virgin Islands because the data to accomplish the update for the 48 States and D.C. were available sooner than the data for the other areas covered by this notice.

(7 U.S.C. 2011–2032)

Dated: March 3, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–5811 Filed 3–11–94; 8:45 am]

BILLING CODE 3410–30–U

RIN 0584–AB62

Food Stamp Program: Maximum Allotments for the 48 States and DC, and Income Eligibility Standards and Deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General Notice.

SUMMARY: The purpose of this notice is to update for Fiscal Year 1994: (1) The maximum allotment levels, which are the basis for determining the maximum amount of food stamps which participating households receive, (2) the gross and net income limits for food stamp eligibility which certain households may have, (3) the standard deduction and maximum amounts for the excess shelter expense deduction available to certain households, and (4) the homeless household shelter deduction. These adjustments, required by law, take into account changes in the cost of living and statutory adjustments.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305–2496. Copies of the Regulatory Impact Analysis, which is summarized in this preamble, are also available from Ms. Seymour.

SUPPLEMENTARY INFORMATION:

Publication

As required by law, State agencies must implement this action on October 1, 1993 based on advance notice of the new amounts. In accordance with regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the maximum allotment levels, income eligibility standards, and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12866

The Food and Nutrition Service is issuing this notice in conformance with Executive Order 12866, and has determined that it is an "economically significant regulatory action." Based on information compiled by the Department, it has been determined that this action will increase Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment or innovation.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

William E. Ludwig, the Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

Need for Action

This action is required by sections 3(o) (1) and (11), 5(c), and 5(e)(4) of the Food Stamp Act of 1977, as amended (7 U.S.C. secs. 2012(o) (1) and (11), 2014(c), and 2014(e) the "Food Stamp Act"). Section 3(o)(11) requires that the October 1, 1993 change in food stamp allotments be based upon 103 percent of the June 1993 cost of the Thrifty Food Plan (TFP) for a family of four persons consisting of a man and woman ages 20–50 and children ages 6–8 and 9–11. Adjustments are made to take into account household size, economies of scale and a requirement to round the final results down to the nearest dollar increments. Section 5(c) requires that the income eligibility standards for the program be adjusted on October 1, 1993 based on changes in the Federal income poverty guidelines. Section 5(e)(4) requires that the standard deductions and the maximum amounts for the excess shelter expense deductions be adjusted on October 1, 1993 to the nearest lower dollar increments to reflect certain changes for the 12 months ending June 30, 1993. Section 13912 of the Mickey Leland Childhood Hunger Relief Act, chapter 3 of P.L. 103–66, the Omnibus Reconciliation Act of 1993, amends section 5(e) by further raising the excess shelter expense deduction cap effective July 1, 1994.

Benefits

This action increases maximum food stamp allotments, income eligibility standards, and deductions based on the changing cost of living.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $652.6 million in Fiscal Year 1994.

Background

Income Eligibility Standards

The eligibility of households for the Food Stamp Program, except those in which all members are receiving public assistance (PA) or supplemental security income benefits (SSI), is determined by comparing their incomes to the appropriate income eligibility standards (limits). Households containing an elderly or disabled member need to have net incomes below the net income limits, while households which do not contain an elderly or disabled member must have net incomes below the net income limit and gross incomes below the gross income limit. Households in which all members are receiving PA or SSI are categorically eligible; their incomes do not have to be below the income limits.

In addition, elderly individuals (and their spouses) who are unable to prepare meals because of certain disabilities, may be considered separate households, even if they are living and eating with another household. 7 U.S.C. Sec. 2012(i). The Food Stamp Act limits separate household status to those persons who meet both of the following requirements:

(1) Their own income may not exceed the net income eligibility standards, and

(2) The income of those with whom they reside may not exceed 165 percent of the poverty line.

The net and gross income limits are derived from the Federal income poverty guidelines. The net income limit is 100 percent of the guidelines; the gross income limit is 130 percent of the guidelines. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility standards are updated annually. The effective date of October 1 is required by the Food Stamp Act.

The revised income eligibility standards are as follows:

Food Stamp Program; October 1, 1993—September 30, 1994

NET MONTHLY INCOME ELIGIBILITY STANDARDS

[100 Percent of Poverty Level]

Household size	48 States[1]	Alaska	Hawaii
1	$581	$725	$670
2	786	982	905
3	991	1,239	1,140

NET MONTHLY INCOME ELIGIBILITY STANDARDS—Continued

[100 Percent of Poverty Level]

Household size	48 States [1]	Alaska	Hawaii
4	1,196	1,495	1,375
5	1,401	1,752	1,610
6	1,606	2,009	1,845
7	1,811	2,265	2,080
8	2,016	2,522	2,315
Each add. member	+205	+257	+235

[1] Includes District of Columbia, Guam, and the Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS

[130 Percent of Poverty Level]

Household size	48 States [1]	Alaska	Hawaii
1	$756	$943	$871
2	1,022	1,277	1,177
3	1,289	1,610	1,482
4	1,555	1,944	1,788
5	1,822	2,278	2,093
6	2,088	2,611	2,399
7	2,355	2,945	2,704
8	2,621	3,279	3,010
Each add. member	+267	+334	+306

[1] Includes District of Columbia, Guam, and the Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY DISABLED ARE A SEPARATE HOUSEHOLD

[165 Percent of Poverty Level]

Household size	48 States [1]	Alaska	Hawaii
1	$959	$1,197	$1,106
2	1,297	1,620	1,494
3	1,635	2,044	1,881
4	1,974	2,467	2,269
5	2,312	2,891	2,657
6	2,650	3,314	3,045
7	2,988	3,738	3,432
8	3,327	4,161	3,820
Each add. member	+339	+424	+388

[1] Includes District of Columbia, Guam, and the Virgin Islands.

Thrifty Food Plan (TFP) and Allotments

The TFP is a plan for the consumption of foods of different types (food groups) that households might use to provide nutritious meals and snacks for household members. The plan suggests amounts of food for men, women, and children of different ages, and it meets dietary standards. The cost of the TFP is adjusted annually to reflect changes in the costs of the food groups.

The TFP is also the basis for establishing food stamp allotments. Nationally, food stamp allotment levels are adjusted periodically to reflect changes in food cost levels. Section 3(o)(11) of the Food Stamp Act (7 U.S.C. Sec. 2012(o)(11)), provides for an adjustment on October 1, 1993, based upon 103 percent of the June 1993 cost of the TFP for a family of four persons consisting of a man and woman ages 20–50 and children ages 6–8 and 9–11. In June 1993, the cost of the TFP was $364.90 in the 48 States and D.C.

To obtain the maximum food stamp benefit for each household size, June 1993 TFP costs for the four-person household (of $364.90) were increased by 3 percent, divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar. The maximum benefit, or allotment, is paid to households which have no net income. For households which have some income, the individual household's allotment is determined by reducing the maximum allotment for the household's size by 30 percent of the individual household's net income.

The following tables show the new allotments for the 48 States and DC.

ALLOTMENT AMOUNTS [1]—OCTOBER 1993 AS ADJUSTED

Household size	48 States & DC
1	$112
2	206
3	295
4	375
5	446
6	535
7	591
8	676
Each additional person	+85

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, a 3 percent increase in the TFP and rounding.

Minimum Benefit.

Pursuant to Section 8(a) of the Food Stamp Act, the $10 minimum monthly benefit provided to all one- and two-person households must be adjusted on each October 1 to reflect the percentage change in the TFP for the 12-month period ending the preceding June, with the result rounded to the nearest $5. In order to implement this provision of the law, the minimum benefit is adjusted each year as follows: (1) The percentage change in the TFP from June of the previous year to June of the current year (prior to rounding) is calculated; (2) this percentage change is multiplied by the previous "unrounded" minimum benefit to obtain a new unrounded benefit amount; and (3) the new unrounded minimum benefit is then rounded to the nearest $5 in accordance with the statutory provisions.

The unrounded cost of the TFP was $355.55 in June 1992 and $364.895 in June 1993. The change from June 1992 to June 1993 is 102.6284%, which when multiplied by $10.96, the unrounded minimum benefit in Fiscal Year 1993, results in a new unrounded minimum benefit of $11.25. Rounded to the nearest $5, the minimum benefit for Fiscal Year 1994 is $10.

Deductions

Food stamp benefits are calculated on the basis of an individual household's net income. Deductions serve to lower household net income and thus to increase household benefits. When a household's net income decreases, its food stamp benefits increase.

The standard deduction is available to all households. The excess shelter expense deduction is available to households with extremely high shelter costs. There is a maximum amount for the excess shelter deduction for households with no elderly or disabled members but no maximum for households with elderly or disabled members. The standard deduction and the maximum amount for the excess shelter expense deduction for households with no elderly or disabled members are being adjusted by this Notice.

This Notice is also adjusting the homeless household shelter expense. The homeless household shelter expense is a standard estimate of the shelter expenses of homeless households and is available to households in which all members are homeless and are not receiving free shelter throughout the month.

Adjustment of the Standard Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that, in computing household income, households shall be allowed a standard deduction. (7 U.S.C. Sec. 2014(e)). Section 5(e) also requires that the standard deduction be adjusted periodically. The deduction for the 48 States and DC was last adjusted effective October 1, 1992. Section 5(e)(4) requires that the adjustment in the level of the standard deduction shall take into account changes in the Consumer Price

Index for All Urban Consumers (CPI–U) published by the Bureau of Labor Statistics (BLS) for items other than food (7 U.S.C. Sec. 2014(e)(4)). The adjustments are rounded to the nearest lower dollar pursuant to the requirements of Section 5(e). There are separate standard deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands.

The following table shows the deductions resulting from the last adjustment, the unrounded results of this adjustment, and the new deduction amounts that go into effect on October 1, 1993.

STANDARD DEDUCTIONS FOR ALL HOUSEHOLDS

	Previous standard deductions (eff. 10–1–92)	New unrounded numbers (10-1-93)	Standard deductions (eff. 10–1–93)
48 States and DC	$127	$131.19	$131
Alaska	216	223.77	223
Hawaii	179	185.21	185
Guam	254	262.35	262
Virgin Islands	112	115.75	115

Adjustment of the Shelter Deduction

Section 5(e) of the Food Stamp Act also provides that, in computing household income, households shall be allowed a deduction for certain excess shelter expenses. 7 U.S.C. Sec. 2014(e). There is a maximum amount for the excess shelter expense deduction, unless the household has an elderly or disabled member, in which case there is no maximum. The maximum amount for the excess shelter expense deduction is adjusted each October 1 based on changes in the shelter, fuel and utilities components of housing costs in the CPI–U published by BLS. Moreover, Section 13912 of the Mickey Leland Childhood Hunger Relief Act amends 5(e) by raising the excess shelter expense deduction cap over a period of three years before removing it altogether The first increase is effective July 1, 1994 Shelter deductions for the 48 States and DC are at one level while shelter deductions for Alaska, Hawaii Guam, and the Virgin Islands are set separately

The following table shows the maximum shelter deductions resulting from the last adjustment, the unrounded results of this adjustment, and the new maximum excess shelter deductions that went into effect October 1, 1993 as well as the new maximum excess shelter deduction that is required by statute to go into effect July 1, 1994

MAXIMUM SHELTER DEDUCTIONS FOR HOUSEHOLDS WITHOUT ELDERLY OR DISABLED MEMBER

	Previous shelter deductions (10–1–92)	New unrounded numbers (10–1–93)	Shelter deductions (10–1–93)	Shelter deductions (07–1–94)
48 States and DC	$200	$207 04	$207	$23[illegible]
Alaska	349	369.80	359	402
Hawaii	286	295.41	295	330
Guam	243	251 23	251	280
Virgin Islands	148	152.76	152	171

(7 U.S.C 2011–2032)

Adjustment of the Homeless Household Shelter Expense

Section 11(e)(3)(E) of the Food Stamp Act requires the Secretary to prescribe rules requiring state agencies to develop standard estimates of the shelter expenses that may reasonably be expected to be incurred by households in which all members are homeless but which are not receiving free shelter throughout the month. 7 U.S.C. Sec. 2020(e)(3)(E). In recognition of the difficulty State agencies may face in gathering the necessary information to compute standard shelter estimates for their States, the Secretary offered a standard estimate which may be used by all State agencies in lieu of their own estimates.

In the Deduction and Disaster Provisions from the Mickey Leland Memorial Domestic Hunger Relief Act final rule, published at 56 FR 63613 (December 4, 1991), the Department stated that it would annually adjust the homeless household shelter expense each October 1 using the same changes in the shelter, fuel and utilities component of the CPI used in indexing the shelter cap. This year's homeless household shelter expense is $137

Dated: February 16, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services

[FR Doc. 94–5810 Filed 3–11–94, 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Management of Selected Vegetation Stands in the Nebo Management Area: Spanish Fork Ranger District, Uinta National Forest, Utah County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to document the analysis of the effects of alternatives for management of white fir timber stands infested with fir engraver beetles (Scolytus Ventralis) within the Nebo Management Area of the Spanish Fork Ranger District of the Uinta National Forest. The proposed action is to implement management activities that will support the desired

future condition for the Nebo Management Areas outlined in the Uinta National Forest Land and Resource Management Plan (Forest Plan) in accordance with the requirements of 36 CFR 219.17 and 219.27.

The project area is located south of Payson, Utah, and northeast of Nephi, Utah, on lands accessible from the Mt. Nebo Loop Scenic Byway. The largest concentration of infected timber stands are in the Sheepherder Hill area (Sections 15, 22–24, 28, 29, T10S, R2E, Salt Lake Meridian). The purpose of this proposed management action is to save the remaining healthy trees by removing the competition that may be posed by dead and dying conifer trees and planting seedlings to accelerate the recovery time for reestablishing a healthy forest.

Implementation of activities to restore a healthy forest condition may require entry into areas designated as roadless in the 1980 RARE II inventory.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis for this Forest Service proposal should be received in writing by May 10, 1994. A scoping meeting will be held at the Spanish Fork Ranger Station, May 4, 1994 from 3 to 7 p.m.

ADDRESSES: Send written comments to Tom Tidwell, District Ranger, Spanish Fork Ranger District, 44 West 400 North, Spanish Fork, Utah 84660.

FOR FURTHER INFORMATION CONTACT: Requests for further information or comments should be sent to Mark Sensibaugh, Resource Assistant, phone (801) 798–3571.

SUPPLEMENTARY INFORMATION: Because much of this project area is within view of a designated Scenic Byway and in the vicinity of the Mt. Nebo Wilderness Area, the nature and scope of the decision to be made is affected.

Aerial surveys indicate more than 15,000 acres of timber stands were infested in the Nebo Management Area by the summer of 1993. A biological evaluation of current stand conditions was conducted on 350 acres to assess the magnitude of the problem and potential management options. The biological evaluation indicated that management actions should be considered to reduce the volume of dead and dying trees in the more concentrated, infested timber stands in the area, specifically Sheepherder Hill. In the spring of 1993, an emergency timber sale, the Payson Canyon Salvage Sale, was approved for harvesting approximately 141 acres of highly visible dead and dying timber within the proposed project area, but not within an inventoried roadless area. The emergency sale is adjacent to the Sheepherder Hill area. Since the Payson Canyon Salvage Sale was initiated, many additional fir beetle infestations have been identified and concern about forest health has increased throughout the area.

Scoping of public issues were initiated as part of the Payson Canyon Salvage Sale, which is applicable to this project. The preliminary list of issues identified to be addressed by this project analysis include:

—Forest health
—Impacts on the roadless characteristics of the project area
—Cumulative impacts of alternatives to this action
—Visual impacts to the Scenic Byway
—Fuel build-up/fire and insect disease hazards
—Economic feasibility of implemented management actions
—Implications to wetlands, floodplains and riparian vegetation
—Possible impacts to threatened, endangered and/or sensitive species
—Land/slope stability
—Forest user safety
—Water quality
—Elk calving vs. the timing of management activities

A wide range of alternatives will be considered in managing the insect impacted timber stands. A preliminary list of alternatives includes:

—No change to current management
—Harvest the dead and dying trees
—Burning of infested areas
—Stand treatment based on its visibility from the Scenic Byway
—A combination of any or all of the above
—Other considerations identified in the analysis process

There are no known permits or licenses required to implement any of the proposed alternatives.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be most helpful, comments on the Draft Environmental Impact Statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Environmental objectives that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

It is estimated that the Draft Environmental Impact Statement (DEIS) will be released for public review in August 1994. The Final EIS is scheduled to be released in November 1994. Implementation of the project could occur by late fall of 1994 or the Spring of 1995.

After the 45 day comment period ends on the Draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the Final EIS. The Forest Service is required to respond to the comments received in the Final EIS. The responsible official is the District Ranger. The responsible official will consider the comments, responses and environmental consequences discussed in the EIS and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR part 215.

Dated: March 4, 1994

Tom L. Tidwell,

District Ranger.

[FR Doc. 94–5802 Filed 3–11–94; 8:45 am]

BILLING CODE 3410–11–M

Use of Bait in Hunting

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of interim policy; request for public comment.

SUMMARY: The Forest Service gives notice that it is issuing interim policy on the agency's role in regulating the placement of bait on National Forest System lands. The intended effect is to clarify the agency's role in relation to the role of the States and, thus, to provide a consistent approach to the regulation of baiting resident game. Public comment is invited and will be considered in the adoption of a final policy, notice of which will be published in the **Federal Register**.

DATES: Interim Directive No. 2640–94–1 was effective on March 3, 1994, and will expire no later than September 4, 1995, unless removed before that date.

Comments must be received by May 13, 1994.

ADDRESSES: Send written comments to Director, Wildlife and Fisheries (2640), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this interim policy in the Office of the Director, Wildlife and Fisheries, 4th floor Southwest Wing, Auditors Building, 205 14th Street SW., Washington, DC. Those wishing to inspect comments should call ahead at (202) 205–1207 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Tom Darden, Wildlife and Fisheries Staff, (202) 205–1207.

SUPPLEMENTARY INFORMATION: State fish and wildlife agencies have the primary responsibility for protection and management of wildlife populations on National Forest System lands, including adoption of State fish and wildlife laws and regulations affecting the taking of resident game animals. The Forest Service enters into a Memorandum of Understanding (MOU) with each State which governs Forest Service/State cooperation on matters of Statewide fish and wildlife policy or procedure affecting the National Forest System. See FSM 2611.1. The States issue regulations regarding hunting licenses, methods, seasons, locations, and bag limits for resident game and have the primary responsibility for enforcement of fish and wildlife laws and regulations on National Forest System lands. Federal land management statutes acknowledge the States' traditional role in managing fish and wildlife; *see* the National Forest System Organic Administration Act at 16 U.S.C. 480, the Multiple Use-Sustained Yield Act at 16 U.S.C. 528, the Sikes Act at 16 U.S.C. 670h, the Federal Land Policy and Management Act, at 43 U.S.C. 1732. The Forest Service therefore is generally reluctant to override State fish and wildlife regulation, except where federal interests, such as protection of forest land, resources, and users require federal intervention.

The practice of placing bait (food or scent to attract wildlife) is a hunting activity allowed by some State laws and regulations. The baiting of bears is particularly controversial. While the total number of States allowing bear baiting has declined, State fish and wildlife agencies permit the baiting of black bear as a hunting activity in Alaska, Idaho, Oregon, Maine, Michigan, Minnesota, New Hampshire, Utah, Washington, Wisconsin, and Wyoming. The Forest Service intends to work diligently through its ongoing cooperative efforts to encourage the States to evaluate their regulation of the practice of baiting bears. In the meantime, the agency is issuing interim policy regarding the use of bait on National Forest System lands.

In the past, some national forests have regulated the placement of bear baits by requiring hunters and commercial guides to obtain special use authorizations in order to prevent conflicts with other users or other problems associated with the location and removal of bait. Additionally, some Forest Service Regions have issued orders under 36 CFR Part 261 to control litter, as well as to close certain areas to bear baiting where the practice would create unacceptable adverse effects on other resources or forest users. In early 1992, the Forest Service's role in the regulation of bear baiting on the national forests in Wyoming became an issue. Special use authorizations for bear baiting had been issued on a number of national forests in that State. Typically, those special use authorizations included conditions with which the holder had to comply to minimize adverse effects created by placement of bear bait.

In March 1992, the Regional Foresters for the Rocky Mountain and Intermountain Regions issued a joint closure order prohibiting bear baiting in the national forests in Wyoming, unless the baiting activity was conducted in compliance with the requirements of the order pertaining to the placement and disposal of baits. Like the conditions that previously had been included in special use authorizations, the requirements of the order were intended too minimize adverse effects on forest resources and users.

The Fund for Animals and the Friends of the Bow brought suit to challenge the Forest Service's closure order and to challenge what Plaintiffs considered a shift in established policy, that is, no longer requiring special use authorizations for bear bait placement and using closure orders instead (*The Fund for Animals* v. *Robertson*, (D.D.C. Civ. No. 92–1694–TPJ)). These groups perceived this shift in method as a diminution in the level of Forest Service regulation and wildlife protection. The parties settled the case upon the Forest Service's decision to rescind the closure order and, in compliance with the National Environmental Policy Act, to analyze the effects of eliminating the practice of issuing special use authorizations for the placement of bear bait on National Forest System lands in Wyoming. The Regions then prepared an Environmental Assessment to disclose effects on the proposed action and alternatives to the proposal.

Upon completion of the Environmental Assessment and issuance of a Decision Notice by the Rocky Mountain and Intermountain Regional Foresters in April 1993, there were new challenges to the agency's position. Subsequently, the Deputy Chief for the National Forest System decided that national direction was needed to end the conflict and controversy. Accordingly, the Decision Notice was rescinded, and bear baiting in national forests in Wyoming was prohibited pending issuance of national direction. However, because the spring hunting season will begin before a final policy can be adopted, the agency has determined that in fairness to outfitters, guides, and individual hunters, an interim policy should be issued to ensure consistency and uniformity of policy and practice by the Forest Service. State agency regulations have been developed and published in Wyoming and other States governing the use of bait in spring hunts for 1994. These new Wyoming regulations were developed in close coordination with the Forest Service to be in concert with federal regulation and law on the national forests involved and to be protective of National Forest System resources. In addition, hunters, outfitters, and guides in Wyoming have moved forward with the normal practice of planning and booking hunting activity based on the expectation that the Forest Service would have a final policy in place for the spring hunting season. It is unfair to continue the bear baiting prohibition in Wyoming when such a prohibition is not in effect on other National Forest System lands in other States where the practice is permitted, because of the agency's delay in adopting a final policy. Therefore, the agency has issued an interim directive to Forest Service Manual Chapter 2640, which is set out at the end of this notice.

The Forest Service special use authorization regulations at 36 CFR

251.50 exempt noncommercial use and occupancy, including "hunting," from the special use authorization requirement. Since hunting methods subject to State regulation are included within the term "hunting," the interim directive makes explicit that where State regulations permit baiting, the Forest Service will not require a special use authorization for the practice of baiting connected with hunting on National Forest System lands. Outfitter and guide activities require a special use authorization. Outfitters and guides must comply with applicable State laws and regulations, and Forest Service closure orders as a condition of special use authorizations.

However, if the placement of bait should become a land or resource management issue and it is determined that the State regulations governing baiting would not protect resources in an area adequately or would otherwise be inconsistent with the applicable forest plan or conflict with federal laws such as the Endangered Species Act, then the authorized officer will issue an order to close the area to baiting. The authorized officer also may close an area to baiting considering the likely impact on a site-specific basis on water quality, public health and sanitation, or the potential threat to the viability of wildlife. Finally, the policy would explicitly prohibit the issuance of a special use authorization to individuals for the specific act of placing bait on National Forest System lands for hunting purposes.

The approach adopted in the interim policy maintains protection of national forest resources. First, under the terms of the Memorandums of Understanding with the State fish and wildlife or game agencies, the Forest Service continuously participates in the review and adoption of State game regulations as they affect National Forest System land or resources. Second, the interim policy provides the Regional Forester or Forest Supervisor with the flexibility and discretion to determine if baiting should be prohibited in a specific location. Finally, if a hunter, in placing bait to attract resident game creates litter through improper placement or untimely removal of bait in violation of State regulations or Forest Service closure orders, the agency has the authority under its regulations at 36 CFR 261.11 to cite the hunter for violating the prohibition on litter. If such bait results in violation of State regulations, the agency has authority to cite the hunter for violation of 36 CFR 261.8, and agency employees routinely do so where such violations occur. In short, the agency's approach (1) relies on existing relationships with each State, (2) prevents duplicative regulation by Federal and State agencies, and (3) provides site-specific environmental safeguards to address those situations where baiting would have an adverse site-specific effect on National Forest System land or resources.

Pursuant to the rules at 36 CFR part 316, the text of the baiting policy as it has been issued in Interim Directive No. 2640–94–1 to the Forest Service Manual is set out at the end of this notice. Public comment is invited and will be considered in adoption of a final policy.

Environmental Impact

Section 31.1b(2) of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions." This interim directive would provide administrative instructions to Forest Service field offices on the procedures and processes to follow in the case of baiting resident game. Accordingly, the agency's preliminary assessment is that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Controlling Paperwork Burden on the Public

This policy will not result in additional paperwork. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR Part 1320 do not apply.

Regulatory Impact

This interim policy has been reviewed under USDA procedures and Executive Order 12866 on Federal Regulations. It has been determined that this is not a significant rule.

Dated: March 7, 1994.

Jack Ward Thomas,

Chief.

FOREST SERVICE MANUAL

Washington, D.C.

Interim Directive: !!ID 2640–94–1
Effective Date:
Expiration Date:
Chapter: 2640—Stocking and Harvesting
Posting Notice:
Remove:

This directive clarifies roles, responsibilities, and procedures to regulate the placement of bait on National Forest System lands.

FSM 2643 emphasizes the cooperation between the Forest Service and State fish and wildlife agencies through memorandums of understanding.

FSM 2643.1 clarifies the States' role and emphasizes the need for consistency of State regulations with Federal laws and forest plans.

FSM 2643.12 adds factors to consider and methods to regulate baiting.

2643—Applicability of State Fish and Wildlife Laws and Regulations

The Forest Service actively cooperates in the development of State fish and wildlife laws and regulations and may assist in the enforcement of State fish and wildlife laws on National Forest System lands. Pursuant to FSM 2610, Regional Foresters shall ensure that memorandums with State fish and wildlife agencies recognize the role of the Forest Service in cooperating in the development of State fish and wildlife laws and regulations, especially those addressing hunting, fishing, and trapping as they would apply to occupancy and use of National Forest System lands.

2643.1—Hunting, Fishing, and Trapping Regulations

Hunting, fishing, and trapping of fish and wildlife and associated practices are permitted on National Forest System lands subjects to State fish and wildlife laws and regulations, unless one or both of the following apply:

1. State fish and wildlife laws and regulations conflict with federal laws; or
2. State laws and regulations would permit activities that conflict with the land and resource management responsibilities of the Forest Service or that are inconsistent with forest plans.

2643.12—Trapping Furbearers

Use of Bait for Resident Game Hunting. The use of bait as a lure or attractant for the purpose of taking resident game on National Forest System lands is considered a hunting practice subject to State regulation.

Where State hunting regulations prohibit the use of bait, the practice is prohibited on National Forest System lands.

Where States permit the use of bait for attracting resident game, this activity is allowed on National Forest System lands, subject to State hunting laws and regulations, unless the authorized officer determines on a site-specific basis that there is a need to prohibit or

restrict the practice of baiting because one or more of the following circumstances exist:

1. The State laws and regulations on placement of bait are inadequate to protect forest land or other resources or users in a particular location and/or to prevent trespass or litter;

2. Baiting is inconsistent with the applicable forest plan; or

3. The State law and regulations conflict with Federal law, such as the Endangered Species Act.

In addition to the mandatory causes for prohibiting or restricting baiting, the authorized officer also may prohibit baiting, regardless of the adequacy of State regulations, based on consideration of the likely impact of baiting on such matters as water quality, public health and sanitation, the potential for litter, or the potential to threaten the viability of wildlife.

Where the authorized officer determines that baiting is a significant problem and should be restricted or prohibited:

1. The officer shall notify State fish and wildlife officials and provide them the opportunity to resolve the issue through further restrictions or the prohibition through State regulation rather than for the Forest Service to issue the restriction or prohibition.

2. If the State does not revise its regulations to adequately regulate or restrict baiting, the Forest Service authorized officer shall, time permitting, close the area or otherwise restrict baiting by issuing an order pursuant to 36 CFR part 261.

Where time does not permit closure of an area to baiting because the hunting season is underway and it would be impracticable to issue a closure order, the Regional Forester or Forest Supervisor shall take such mitigation and/or enforcement measures as are appropriate and practicable to ensure consistency with forest plan management direction and compliance with Federal laws, orders, and regulations, and protection of forest users and resources. For example, the agency may close a road or gate, or cite violations of other State or Forest Service regulations.

Closure is not the only way to address the practice of baiting. It is expected that land managers as part of their day-to-day management of National Forest System lands and resources will be cognizant of the effects of hunting activities and take such proactive measures, after consultation with the responsible fish and wildlife agency, such as hunter education, as may be necessary to ensure resource protection consistent with forest plan management direction.

This policy, in and of itself, does not compel an authorized officer to undertake a specific decision or to make a determination of whether baiting is allowed in those States where the practice is permitted.

Special use authorization shall not be issued for placing bait on National Forest System lands for hunting purposes (36 CFR 251.50(c)).

For the purposes of this section and to assure consistency in coordination of national forest wildlife matters with State agencies, the authorized officer is the Regional Forester or Forest Supervisor responsible for executing memorandums of understanding with the State wildlife agency.

[FR Doc. 94-5786 Field 3-11-94; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors Technical Advisory Committee; Partially Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held March 30, 1994, 8:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of export controls affecting sensors & lasers.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, EA/OAS—room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482-2583.

Dated: March 8, 1994.

Betty A. Ferrell,

Director.

[FR Doc. 94-5876 Filed 3-11-94; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with February anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with section 353.22(a) and 355.22(a) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with February anniversary dates.

Initiation of Reviews

In accordance with sections 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than February 28, 1995.

	Period to be reviewed
Antidumping Duty Proceedings:	
Canada: Racing Plates, A–122–050, Equine Forgings Limited	02/01/93–01/31/94
France: Anhydrous Sodium Metasilicate, A–427–098, Rhone-Poulenc, S.A	01/01/93–12/31/93
Japan: Mechanical Transfer Presses, A–588–810, Aida Engineering, Ltd., Komatsu, Ltd., Ishikawajima-Harima Heavy Industries Co., Ltd., Hitachi Zosen Corporation	02/01/93–01/31/94
The Republic of Korea: Certain Small Business Telephone Systems and Subassemblies Thereof, A–580–803, Ssangbangwool Electronics Ltd	02/01/93–01/31/94
The People's Republic of China: Axes/Adzes; Bars/Wedges; Hammers/Sledges; and Picks/Mattocks, A–570–803, Fujian Machinery & Equipment, Import & Export Corporation, (FMEC), Shandong Machinery Import & Export Corporation (SMC)	02/01/93–01/31/94
United Kingdom: Sodium Thiosulfate, A–412–805, William Blythe & Co., Ltd.	02/01/93–01/31/94
Suspension Agreements:	
Venezuela: Gray Portland Cement and Clinker, A–307–803	02/01/93–01/31/94
Countervailing Duty Proceedings:	
Saudi Arabia: Carbon Steel Wire Rod, C–517–501	01/01/93–12/31/93

Interested parties must submit applications for disclosure under administrative protective orders in accordance with sections 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1993).

Dated: March 7, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–5882 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–820]

Antidumping Duty Order: Ferrosilicon from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 1994.

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.

Scope of the Order

The merchandise subject to this antidumping duty order is ferrosilicon (FeSi), 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 of any other element.

FeSi is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. FeSi 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.

FeSi is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of FeSi found in a given shipment. FeSi grades are defined by the percentages by weight of contained silicon and other minor elements. FeSi is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent FeSi.

Calcium silicon, ferrocalcium silicon, and magnesium FeSi are specifically excluded from the scope of this order. 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 FeSi 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.

FeSi 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. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

FeSi in the form of slag is included within the scope of this order if it meets, generally, the chemical content definition stated above and is capable of being used as FeSi. FeSi 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. Parties that believe their importations of slag do not meet these definitions should contact the Department and request a scope determination.

Antidumping Duty Order

On January 24, 1994, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of FeSi from Brazil materially injure a U.S industry.

In accordance with section 735(e) of the Act, on February 15, 1994, the Department issued an amended final determination that FeSi from Brazil is being sold at less than fair value (59 FR 8598, February 23, 1994) to correct ministerial errors. On February 18, 1994, the ITC, after considering the

Department's amended final determination, reaffirmed its determination that the domestic industry producing FeSi is materially injured by reason of subject imports from Brazil, including imports from Minasligas.

Therefore, in accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value (FMV) of the merchandise exceeds the United States price (USP) for all entries of FeSi from Brazil. These antidumping duties will be assessed on all unliquidated entries of FeSi from Brazil entered, or withdrawn from warehouse, for consumption on or after August 16, 1993, the date on which the Department published its preliminary determination notice in the **Federal Register** (58 FR 43323). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Manufacturer/producer/exporter	Margin (percent)
Companhia Ferroligas Minas Gerais	3.46
Italmagnesio S.A. Industria e Comercio	88.86
Companhia Brasileira Carbureto de Calcio	15.53
All Others	35.95

In its final determination, the Department found that critical circumstances existed with respect to exports from Brazil by Italmagnesio S.A. Industria e Comercio (Italmagnesio). However, on January 24, 1994, the ITC notified the Department that retroactive assessment of antidumping duties was not necessary to prevent recurrence of material injury from massive imports over a short period. As a result of the ITC's negative critical circumstances determination, pursuant to section 735(b)(4) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(e)(2) with respect to Italmagnesio's FeSi entered, or withdrawn from warehouse for consumption prior to August 16, 1993.

This notice constitutes the antidumping duty order with respect to FeSi from Brazil, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: March 7, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Note: Temporary Restraining Order Regarding Ferrosilicon Imports from Companhia Brasileira Carbureto de Calcio (CBCC)

On February 23, 1994, the Court of International Trade (CIT) entered a temporary restraining order prohibiting the Customs Service from collecting deposits of the estimated antidumping duty margin for CBCC at a rate higher than that published in the original final determination. Thus, notwithstanding the language of the antidumping duty order (above), the Department will not, until permitted to do so by the CIT, instruct Customs to collect cash deposits equal to the amount of the antidumping duty margin calculated in the Department's amended final determination for imports of ferrosilicon from CBCC. Until we are notified differently by the Court, we are instructing Customs to collect cash deposits on imports of ferrosilicon from CBCC equal to 2.23 percent, the amount of the antidumping duty margin calculated in the Department's final original determination.

Dated: March 7, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5877 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–029]

Preliminary Results of Antidumping Duty Administrative Review; Fishnetting of Man-Made Fiber From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping finding administrative review.

SUMMARY: In response to a request by Yamaji Fishing Net Co., Ltd. (the respondent), the Department of Commerce (the Department) has conducted an administrative review of the antidumping finding on fishnetting of man-made fiber from Japan. This review covers one company and the period June 1, 1992 through May 31, 1993. For these preliminary results, we applied the best information available (BIA). The review indicates the existence of dumping margins during the period.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Kim Moore or Lisa Raisner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–0090/3518.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1972, the Department of Treasury published in the **Federal Register** (37 FR 11560) the antidumping finding on fishnetting of man-made fiber from Japan. On June 7, 1993, the Department published a notice of opportunity to request review for the period June 1, 1992 through May 31, 1993 (58 FR 31941). The respondent requested, in accordance with 19 CFR 353.22(a) that we conduct an administrative review. We published the notice of initiation on July 21, 1993 (58 FR 39007). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of fishnetting of man-made fibers, not including salmon gill netting, from Japan. The merchandise is currently classified under item numbers 5608.11.00, 5608.19.10, and 5608.90.10 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

This review covers entries of the subject merchandise by Yamaji Fishing Net Co., Ltd., during the period June 1, 1992 through May 31, 1993.

Analysis

Although Yamaji attempted to respond to all Department requests for information, the data submitted was unverifiable. In particular, at verification in Japan we discovered that approximately 40 percent of total home market sales had not been reported. Furthermore, because Yamaji did not prepare adequate source documentation, the Department was unable to complete sales traces to its satisfaction. Finally, significant discrepancies and errors in

Yamaji's sales listings were identified, thereby making it impossible to verify several of Yamaji's claimed adjustments. For further information on the deficiencies in the respondent's questionnaire response, see the verification report filed on the record of this case.

Because we have no data upon which we can reliably base our analysis, the Department must use BIA for its preliminary results of review.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we rely upon BIA in cases where a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes proceedings. The Department generally uses a two-tiered approach in its choice of BIA. For uncooperative respondents or respondents which substantially impede the proceedings ("first tier"), the Department uses the higher of (1) the highest rate for any company from the original investigation or prior administrative review or (2) the highest rate found in the current review for any company. For respondents which attempt to cooperate ("second tier"), the Department uses the higher of (1) the highest rate ever applicable to the firm for the subject merchandise or (2) the highest calculated rate in the current review for any firm (see Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al., 58 FR 39729, July 26, 1993).

As outlined above, the second-tier BIA rate should be applied, since Yamaji was essentially cooperative. Accordingly, we will continue to apply Yamaji's previous rate of 18.30 percent, which is both the highest rate ever applicable to the firm for the subject merchandise and the highest rate in the proceeding (see Fishnetting of Man-Made Fibers from Japan; Final Results of Administrative Review of Antidumping Finding, 56 FR 49457, September 30, 1991).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin exists for the period June 1, 1992 through May 31, 1993, as follows:

Manufacturer/exporter	Percent margin
Yamaji Fishing Net Co., Ltd	18.30

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of the notice of final results of this administrative review, for all shipments of the subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be their company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, and, because the proceeding is governed by an antidumping finding, the cash deposit rate will be set equal to the "new shipper" rate established in the first administrative review, as discussed below.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, Slip Op. 93-79, and *Federal-Moqul Corporation and the Torrington Company* v. *United States*, Slip Op. 93-83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of the administrative review published by the Department (or that rate as amended for correction of clerical errors 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 finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of the review will be 1.94 percent, the "new shipper" rate established in the first final results of the administrative review published by the Department (47 FR 28978, July 2, 1982).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c).

Dated: March 4, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-5878 Filed 3-11-94; 8:45 am]

BILLING CODE 3510-DS-M

[A-301-801 and A-331-801]

Initiation of Antidumping Duty Investigations: Fresh Cut Roses From Colombia and Ecuador

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–0371.

Initiation of Investigations

The Petitions

On February 14, 1994, we received petitions filed in proper form by the Floral Trade Council. In accordance with 19 CFR 353.12, the petitioner alleges that imports of fresh cut roses from Colombia and Ecuador are being, or are 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 are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petitions because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. 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, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigations

The products covered by these investigations are fresh cut roses, including sweethearts or miniatures, intermediates, and hybrid teas, whether imported as individual blooms (stems) or in bouquets or bunches. Roses are classifiable under subheadings 0603.10.6010 and 0603.10.6090 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Colombia

Petitioner based United States price (USP) on offers for sale by Colombian importers and distributors of the subject merchandise to U.S. customers. Petitioner deducted from USP amounts for air freight, insurance, customs duties and handling charges. Petitioner also deducted an amount for commissions paid to the grower on sales of subject merchandise.

Petitioner calculated foreign market value (FMV) using two methodologies. First, petitioner based FMV on import statistics for fresh cut roses in various third countries. Second, petitioner based FMV on constructed value (CV).

For FMV based on import statistics, petitioner used third country import statistics obtained from Statistics Canada and Eurostat. Petitioner deducted amounts for air freight and insurance and, where appropriate, duty charges. Since the import statistics were in foreign currencies, petitioner made currency conversions using monthly exchange rates published in the Federal Reserve Bulletin.

Petitioner alleged home market sales below the cost of production (COP) with respect to the subject merchandise for all Colombian producers and exporters named in the petition. However, petitioner did not provide any company-specific sales data in its COP allegation. Because it is the Department's practice to require COP allegations to be company-specific, we have not initiated a COP investigation.

Regarding FMV based on CV, because the Department is not initiating a COP investigation, and because the information submitted concerning price-to-price comparisons was deemed to be adequate, we did not review the CV data contained in the petition, nor have we accepted it for purposes of initiation.

Comparison of FMV based on import statistics and net USP for sales of fresh cut roses from Colombia results in a range of alleged dumping margins from .4 percent to 256.7 percent.

Ecuador

Petitioner based USP on offers for sale by Ecuadorean importers and distributors of the subject merchandise to U.S. customers. Petitioner deducted from USP amounts for air freight, insurance, customs duties and handling charges. Petitioner also deducted an amount for commissions paid to the grower on sales of subject merchandise. Petitioner calculated FMV using the two methodologies discussed above for Colombia.

Petitioner alleged home market sales below COP with respect to the subject merchandise for all Ecuadorean producers and exporters named in the petition. However, because petitioner did not provide any company-specific sales data in its COP allegation, we have not initiated a COP investigation.

Regarding FMV based on CV, because the Department is not initiating a COP investigation, and because the information submitted concerning price-to-price comparisons was deemed to be adequate, we did not review the CV data contained in the petition, nor have we accepted it for purposes of initiation.

Comparison of FMV based on import statistics and net USP for sales of fresh cut roses from Ecuador results in a range of alleged dumping margins from .2 percent to 316.7 percent.

Initiation of Investigations

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioners supporting the allegations. We have examined the petitions on fresh cut roses from Colombia and Ecuador and have found that the petitions meet the requirements of 19 CFR 353.13(a). Therefore, we are initiating antidumping duty investigations to determine whether imports of fresh cut roses from Colombia and Ecuador are being, or are likely to be, sold in the United States at less than fair value. If these investigations proceed normally, we will make our preliminary determinations by July 25, 1994.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of these actions and we have done so.

Preliminary Determination by the ITC

The ITC will determine by March 31, 1994, whether there is a reasonable indication that imports of fresh cut roses from Colombia and Ecuador are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination in any of these investigations will result in its termination; otherwise, the investigations 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: March 7, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5879 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–P

[A-570-829]

Postponement of Preliminary Antidumping Duty Determination: Saccharin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Jennifer Yeske, Office of Countervailing Investigations, U.S. Department of Commerce, room BO99, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2239 or 482-0189, respectively.

Postponement

We have determined this investigation to be extraordinarily complicated due to the large number of producers and resellers. We have also determined that respondent parties to the proceeding are cooperating in this investigation. Accordingly, pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended, ("the Act") and 19 CFR 353.15(b), we are postponing the date of the preliminary determination until no later than June 16, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: March 4, 1994.

Joseph A. Spetrini

Assistant Secretary for Import Administration

[FR Doc. 94-5880 Filed 3-11-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-423-807, A-428-818]

Initiation of Antidumping Duty Investigations: Steel Wire Rod From Belgium and Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, 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) 482-3773 or (202) 482-0922, respectively.

Initiation of Investigations:

The Petitions

On February 14, 1994, we received petitions filed in proper form by the Connecticut Steel Corp., Georgetown Steel Corp., Keystone Steel & Wire Co., North Star Steel Texas, Inc., Co-Raritan River Steel Co., and Northwestern Steel & Wire Co. (petitioners). At the request of the Department of Commerce (the Department), petitioners filed a supplement to the petitions to correct methodological errors and support the data presented. In accordance with 19 CFR 353.12, petitioners allege that imports of steel wire rod (SWR) from Belgium and Germany are being, or are 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 are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petitions because they are interested parties, as defined under section 771(9)(C) of the Act, and because the petitions are filed on behalf of the U.S. industry producing the product subject to these investigations. 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, these petitions, it should file a written notification with the Acting Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

The products covered by these investigations are hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. The following products are excluded from the scope of this investigation:

- Steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and the following chemical content, by weight: carbon greater than or equal to 0.79%, aluminum less than or equal to 0.005%, phosphorous plus sulfur less than or equal to 0.040%, and nitrogen less than or equal to 0.006%;
- Free-machining steel containing, by weight, 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorus, more than 0.05% of selenium, and/or more than 0.01% of tellurium;
- Stainless steel rods, tool steel rods, ball bearing steel rods, and deformed concrete reinforcing bars; and
- Wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73% carbon by weight, and having partial decarburization and seams no more than 0.075 mm in depth.

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.20.0000, and 7227.90.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Belgium

Petitioners based United States Price (USP) on competitive pricing information obtained through their own business activity and supported with affidavits. This information included delivered prices of SWR to unrelated U.S. customers. Petitioners calculated USP by subtracting movement charges (including U.S. customs duties), and adjusting for Belgian taxes.

FMV was based on home market price quotes for identical merchandise, exclusive of value-added tax (VAT). Petitioners calculated FMV by subtracting movement charges, and converted the prices to U.S. dollars using contemporaneous exchange rates found in the U.S. Customs Bulletin. Petitioners made a circumstance of sale adjustment for differences in credit expenses. Petitioners also calculated the amount of VAT in accordance with the Department's methodology as discussed in Stainless Steel Wire Rod from France (58 FR 68865, December 29, 1993) (Final Determination) and added the resulting amount to both USP and FMV.

Germany

Petitioners based USP on competitive pricing information obtained through their own business activity and supported with affidavits. This information included delivered prices of SWR to unrelated U.S. customers. Petitioners calculated USP by subtracting movement charges (including U.S. customs duties), and adjusting for German taxes.

FMV was based on home market price quotes for identical merchandise or, if non-identical, merchandise which would presumably have a lower cost of production (COP) than the U.S. merchandise, exclusive of value-added

tax (VAT). Petitioners calculated FMV by subtracting movement charges, and converted the prices to U.S. dollars using contemporaneous exchange rates found in the U.S. Customs Bulletin. Petitioners made a circumstance of sale adjustment for differences in credit expenses. Petitioners also calculated the amount of VAT in accordance with the Department's methodology as discussed in Stainless Steel Wire Rod from France (58 FR 68865, December 29, 1993)(Final Determination) and added the resulting amount to both USP and FMV.

Allegations of Sales Below Cost of Production

Petitioners allege that Forges de Thy-Marcinelle, a potential respondent in the Belgium investigation, is selling the subject merchandise in the home market at prices below its COP. This allegation is based on a comparison of company-specific home market prices with the COP. COP was based on the costs of a comparable U.S. producer adjusted for known differences in the country of production.

Based on the information presented, we have reasonable grounds to believe or suspect that the home market sales of Forges de Thy-Marcinelle are being made at less than COP. See Memorandum to Marie E. Parker from C.M. Miller dated March 4, 1994, which is on file in the Import Administration Central Records Unit. Accordingly, pursuant to section 773(b) of the Act and 19 CFR 353.51, we will initiate a COP investigation with respect to this company if it is named as a respondent in the investigation.

Petitioners also allege that specific potential respondents in the German investigation are selling the subject merchandise in the home market at prices below their COP. These allegations are based on a comparison of company-specific home market prices with the COP. COP was based on the costs of a comparable U.S. producer adjusted for known differences in the country of production, and/or company-specific information, and on the company's financial statements, when applicable.

Based on the information presented, we have reasonable grounds to believe or suspect that the home market sales of the following German producers are being made at less than COP: Stahl-und Walzwerk Brandenburg GmbH, Saarstahl AG, and Thyssen Stahl AG. See Memorandum to Marie E. Parker from C.M. Miller dated March 4, 1994, which is on file in the Import Administration Central Records Unit. Accordingly, pursuant to Section 773(b) of the Act and 19 CFR 353.51, we will initiate COP investigations with respect to each of these companies if they are named as a respondent in the investigation.

Alleged Dumping Margins

The range of positive dumping margins of SWR from Belgium based on price-to-price and price-to-CV comparisons of USP to FMV alleged by petitioners, corrected for minor errors, is 5.69% to 52.34%.

The range of positive dumping margins of SWR from Germany based on price-to-price and price-to-CV comparisons of USP to FMV alleged by petitioners, corrected for minor errors, is 2.77% to 72.09%.

Initiation of Investigations

We have examined the petitions for SWR from Belgium and Germany, as amended, and have found that the petitions meet the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of SWR from Belgium and Germany are being, or are likely to be, sold in the United States at less than fair value. If these investigations proceed normally, we will make our preliminary determinations by July 25, 1994.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by March 31, 1994, whether there is a reasonable indication that imports of SWR from Belgium and Germany are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination in any of these investigations will result in its termination; otherwise, the investigations 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: March 7, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5881 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–428–819]

Initiation of Countervailing Duty Investigation: Steel Wire Rod From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger (202) 482–2239 or Jennifer Yeske (202) 482–0189, Office of Countervailing Investigations, Import Administration, room 3099, U.S. Department of Commerce, Washington, DC 20230.

The Petition

On February 14, 1994, we received a petition from by Connecticut Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., Co-Steel Raritan Co., Keystone Consolidated Industries and Northwestern Steel & Wire Co. ("Petitioners") on behalf of the United States steel wire rod industry. In accordance with 19 CFR 355.12, petitioners allege that manufacturers, producers, or exporters of steel wire rod in Germany receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Injury Test

Because Germany is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the subject merchandise from Germany are materially injuring, or threatening material injury to, a U.S. industry.

Standing

Petitioners have stated that they are interested parties, as defined in section 771(9)(C) of the Act, and that they have filed the petition on behalf of the U.S. industry producing steel wire rod. 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, such party should file a written notification with the Assistant Secretary for Import Administration, in accordance with 19 CFR 355.31.

Exclusion Requests

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Scope of Investigation

The products covered by this investigation are hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. The following products are excluded from the scope of this investigation:

- Steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and the following chemical content, by weight: carbon greater than or equal to 0.79%, aluminum less than or equal to 0.005%, phosphorus plus sulfur less than or equal to 0.040%, and nitrogen less than or equal to 0.006%;
- Free-machining steel containing, by weight, 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorus, more than 0.05% of selenium, and/or more than 0.01% of tellurium;
- Stainless steel rods, tool steel rods, ball bearing steel rods, and deformed reinforcing bars; and
- Wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73% carbon by weight, and having partial decarbonization and seams no more than 0.75 mm in depth.

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213 41.3000, 7213.41.6000, 7213 49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.20.0000, and 7227 90.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation remains dispositive.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Initiation of Investigation

The Department has examined the petition on steel wire rod from Germany and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters of steel wire rod receive countervailable subsidies. The following programs are included in our investigation.

1. "Rückzahlungsverpflichten" (RZVs)
2. Government Assumption of Debt
3. Debt Forgiveness by Private Banks
4. Worker Assistance under the European Coal and Steel Community's Article 56(2)(b).

We are not including the following program which was alleged to be benefiting producers of the subject merchandise in Germany.

The Government of Saarland's Capital Contribution to DHS of DM 145.1 Million

Petitioners alleged that a DM 145.1 million payment by the Government of Saarland (GOS) constitutes a countervailable equity infusion. Petitioners base this allegation on their claim that the shares which the GOS received in exchange for this payment had a value of only DM 82.5 million, DM 62.5 million less than what the GOS paid.

The question of whether this transaction constitutes a countervailable equity infusion was addressed in Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Germany (58 FR 6233, January 27, 1993). The Department determined that the funds were provided on terms consistent with commercial considerations because at the same time that the GOS invested, two private investors also invested in DHS on the same terms. Petitioners have provided no new information in this petition indicating that this determination was incorrect. Therefore, the Department does not intend to re-investigate whether the investment was consistent with commercial considerations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of this initiation.

Preliminary Determinations By the ITC

The ITC will determine by March 31, 1994, whether there is a reasonable indication that a United States industry is being materially injured, or threatened with material injury, by reason of steel wire rod imports from Germany. If the ITC makes a negative determination, we will terminate this proceeding; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: March 4, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5883 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, application no. 91–00002

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Automotive Service Industry Association (ASIA) effective March 1, 1994. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, 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. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register** Under section 305(a) of the Act and 15 CFR 325.11(a) any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Automotive aftermarket products including replacement parts, accessories, tools and equipment.

2. Services

Engineering, design and related services related to Products and to contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Technology Rights

Proprietary rights to all kinds of technology associated with Products or Services including but not limited to patents, trademarks, service marks, trade names, copyrights (including neighboring rights), trade secrets, know-how, semiconductor mask works, utility models (including petty patents), industrial designs and computer software protection.

4. Export Trade Facilitation Services (as they relate to the export of Products, Services, and Technology Rights)

Marketing, selling, brokering, shipping, handling, common marking and identification, consulting, international market research, advertising and sales promotion, trade show participation, insurance, product research and design, legal assistance services related to compliance with Customs requirements, transportation, trade documentation and freight forwarding, communication and processing of sales leads and export orders, warehousing, foreign exchange, financing, taking title to goods and liaison with foreign government agencies, trade associations and banking institutions.

Export Markets

The Export Markets include all parts of the world except: The United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands); and Canada.

Export Trade Activities and Methods of Operation

1. ASIA and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and/or Services;

e. Solicit Member Suppliers to sell their Products and/or Services and/or offer Export Trade Facilitation Services through the certified activities of ASIA and/or its Members;

f. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. Members may license associated Technology Rights in Export Markets to non-Members in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and such non-Member customer without coordination with ASIA or any other Member.

3. ASIA and/or its Members may enter into agreements wherein ASIA and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) ASIA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other non-Member Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ASIA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. ASIA and/or any Member when acting as an Export Intermediary shall make its services available to any Member on non-discriminatory terms.

4. Except as set forth in paragraph 8, ASIA and/or its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to export prices, Product quantity, source, and delivery dates are on a transaction-by-transaction basis only;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by ASIA and its Members;

e. information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about ASIA's or its Members' export operations, including without limitation sales and distribution networks established by ASIA or its Members in Export Markets, and prior export sales by Members (including prior export price information).

5. ASIA may provide the Members the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by ASIA itself, or by agreement with Members or other parties.

6. Except as set forth in paragraph 8, ASIA and/or its Members may meet to engage in the activities described in paragraphs 1 through 4 above.

7. ASIA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

8. Restricted Information Exchanges

In the case of engine bearings, any exchange or discussion of, as well as any meeting pursuant to paragraph 6 to exchange or discuss, the types of information set forth in paragraph 4 (not including subparagraphs (f) and (g) thereof) shall be subject to the following restrictions:

a. Participation in any price discussion is limited to those instances in which the prices are discussed and determined solely in the following manner: a Neutral Third Party, hereinafter defined, acting independently, will obtain price information concerning engine bearings from the Members which intend to participate in a joint bid and will incorporate that price information into the joint bid or other sales agreement. For purposes of this provision, "acting independently" means that the Neutral Third Party who obtains from and negotiates price information on behalf of the Members will not disclose the price information of one Member to any other Member intending to participate in a joint undertaking with regard to engine bearings.

b. The limitation set forth in (a) above shall also apply to instances where more than one Member intends to participate, but the participation of a Member is solely as an Export Intermediary for the Export Trade Activity or Method of Operation.

c. Neither ASIA nor any Member participating in the Export Trade Activity or Method of Operation shall disclose the engine bearing price information of one Member to any other Member that produces engine bearings.

d. As used in this paragraph, the term "Neutral Third Party" means an individual, partnership, corporation (profit or non-profit), or any representative thereof which is not engaged in the manufacture, distribution, or sale of engine bearings.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells a Product, Service, Technology Rights and/or Export Trade Facilitation Services, whether a Member or non-Member.

Members (Within the Meaning of Section 325.2(l) of the Regulations)

The member companies of ASIA are listed in Attachment A to this Certificate, which is incorporated by reference.

Terms and Conditions of Certificate

(a) Except as expressly authorized in paragraph 4(f), in engaging in Export Trade Activities and Methods of Operation, neither ASIA nor any Member shall intentionally disclose, directly or indirectly, to any other Member or Supplier any information that is about its or any other Member's or Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchaser.

(b) Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing, servicing and repair arrangements) shall be in connection only with actual or potential bona fide export transactions and shall be on a transaction-by-transaction basis only and shall include only those Members participating or having a genuine interest in participating in such transactions; provided that ASIA and/or its Members may discuss standardization of Products and Services for purposes of making bona fide recommendations to foreign governmental or private standard-setting organizations.

(c) Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments for sales of Products or Services in specific export transactions. A Member may withdraw from coverage under this Certificate at any time by giving written notice to ASIA, a copy of which ASIA shall promptly transmit to the Secretary of Commerce and the Attorney General.

(d) ASIA and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate.

The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities or Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Protection Provided by Certificate

This Certificate protects ASIA, its Members and their directors, officers, and employees acting on their behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date (March 1, 1994) until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits ASIA and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to ASIA by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of ASIA or its Members or (b) the legality of such business plans of ASIA or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the U.S. Government is the buyer or where the U.S. Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985).

Attachment A

Berryman Products, Inc.
Federal Mogul Corporation.
A.E. Clevite, Inc.
JS Products, Inc.
KSG Industries, Inc.
Kwik-Way Manufacturing, Inc.
Sealed Power Division of Sealed Power Technologies Limited Partnership.

Standard Motor Products, Inc.
Triangle Auto Parts Co., Inc.
Truck-Lite Co., Inc.

Dated: March 3, 1994.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 94–5884 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DR–P

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, 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. 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 a Certificate should be issued. 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 94–00002." A summary of the application follows.

Summary of the Application

Applicant: Frederick Pogorzelski doing business as Russian Business Center, P.O. Box 90400, Honolulu, Hawaii 96835–0400. Contact: Frederick Pogorzelski, Owner, Telephone: 808–941–4541.

Application No.: 94–00002.

Date Deemed Submitted: March 3, 1994.

Members (In Addition to Applicant): None.

Frederick Pogorzelski d/b/a Russian Business Center seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products:* All Products.

2. *Services:* All Services.

3. *Export Trade Facilitation Services (As They Relate to the Export of Products and Services):* Export Trade Facilitation Services including professional services in the areas of government relations, foreign trade and business protocol, marketing, marketing research, negotiations, joint ventures, shipping, export management, advertising, documentation, insurance and financing, trade show exhibitions, organizational development, management strategies and transfer of technology.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. To engage in Export Trade in the Export Markets, as an Export Intermediary, Frederick Pogorzelski d/b/a the Russian Business Center ("RBC") may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities;

c. Enter into exclusive export sales agreements with Suppliers for the export of Products and/or Services for sale in the Export Markets; such agreements may prohibit Suppliers from exporting independently of RBC;

d. Enter into exclusive agreements with distributors in the Export Markets;

e. Establish the price of Products and/or Services for sale in the Export Markets;

f. Allocate export orders among its Suppliers; and

g. Enter into contracts for shipping.

2. RBC and individual Suppliers may regularly exchange information on a one-on-one basis regarding inventories and near-term production schedules in order that the availability of supplies for export can be determined and effectively coordinated by RBC with its distributors in the Export Markets.

3. RBC may require any Supplier wishing to terminate its export sales agreement to give RBC six months written notice. RBC may require a former Supplier not to sell through foreign distributors with whom RBC deals for a period of two years following termination.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells a Product and/or Service.

Dated: March 7, 1994.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 94–5885 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 030194D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of five applications for scientific research permits and enhancement permits.

Notice is hereby given that the University of Idaho, Department of Fish and Wildlife (P498A), the Idaho Department of Fish and Game (P503N and P503O), the U.S. Army Corps of Engineers (P504E), and the Northern Wasco County Public Utility District (P563) have applied in due form for permits to take listed species of Snake River salmon, as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS

regulations governing listed fish and wildlife permits (50 CFR Parts 217–227).

The University of Idaho (P498A) is requesting a scientific research permit to capture listed Snake River salmon in order to study the potential effectiveness of drawdown as a tool to enhance downstream survival of salmonid smolts. The applicant requests this authorization for a duration of six years.

The U.S. Army Corps of Engineers (P504E) is requesting a scientific research permit to capture listed Snake River salmon in order to study passage through the Lower Granite dam, both for project operation and a possible biological drawdown test. The applicant requests this authorization for a duration of one year.

The Northern Wasco County Public Utilities District (P563) is requesting a scientific research permit to capture listed Snake River salmon in order to monitor the effectiveness of the fish screens and of the downstream bypass facility at their hydroelectric generation facility. The applicant requests this authorization for a duration of one year.

The Idaho Department of Fish and Game (IDFG) is requesting two scientific research and Enhancement permits. The first request (P503N) is for the enhancement of Snake River spring/summer chinook salmon from the headwaters of the Salmon River and Sawtooth Fish Hatchery. The second request (P503O) is for the enhancement of Snake River spring/summer chinook salmon from the East Fork Salmon River. IDFG requests these authorizations for a period of five years each.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: March 8, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–5846 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–22–P

[Docket No. 940256–4055; I.D. 011494A]

Information Relating to Bowhead Whales; U.S. Implementation of Bowhead Whale Strike Quota for 1994

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of information and request for public comment.

SUMMARY: Information is published by NOAA for use in the development of the U.S. position before the International Whaling Commission (IWC) on the aboriginal/subsistence take of bowhead whales and in the domestic allocation of the existing IWC quota for bowhead whales to U.S. natives. NOAA is soliciting public comment on the proposed allocation of the IWC bowhead whale catch limit in 1994.

DATES: Comments must be submitted on or before April 13, 1994.

ADDRESSES: Written comments may be mailed to the Office of International Affairs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A list of documents reviewed for this action may be obtained on request, and the documents examined during business hours (9 a.m. to 5 p.m.) at this address.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, (301) 713–2276.

SUPPLEMENTARY INFORMATION: NOAA is responsible for implementation and enforcement of the Marine Mammal Protection Act (16 U.S.C. 1361–1407), the Endangered Species Act (16 U.S.C 1531–1543) and the Whaling Convention Act 16 U.S.C. 916–916l). In addition, it provides staff support to the U.S. Commissioner to the IWC and to the IWC Interagency Committee. Consistent with these responsibilities, NOAA develops positions for implementation of the aboriginal/subsistence harvest of bowhead whales under Paragraph 13 of the Schedule to the International Convention on the Regulation of Whaling, December 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849 (entered into force, November 10, 1948).

In order to provide for review and comment by the public of the data upon which the U.S. positions are based, the following information is provided: (1) The IWC catch level available for the U.S. aboriginal/subsistence bowhead whale harvest for 1992–1994; (2) a summary of available bowhead scientific information, including estimates of current population level and annual recruitment rates; (3) a summary of information on the nature and extent of aboriginal/subsistence need; (4) the level of aboriginal/subsistence harvest limits which could be implemented domestically; and (5) notice of the availability of those documents reviewed by NOAA and relied on by the Under Secretary for Oceans and Atmosphere in making his finding on the range of harvest limits. NOAA is soliciting public comment on the proposed domestic implementation of the IWC bowhead whale catch limit for 1994.

1. Catch Level

At the 43rd Annual Meeting of the IWC, Reykjavik, Iceland, May 27–31, 1991, the following catch limit was established for aboriginal/subsistence whaling:

"The taking of bowhead whales from the Bering-Chukchi-Beaufort Seas stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that: For each of the years 1992, 1993, and 1994 combined, the total number of whales struck shall not exceed 141, except that: (A) Any unused strikes up to ten percent of the total strikes allowed in the years 1989, 1990, and 1991 combined shall be carried forward from those years and added to the combined total of strikes for the years 1992, 1993, and 1994; and (B) in any one year no more than 54 whales shall be struck and no more than 41 shall be landed. (Schedule to the Convention, Paragraph 13(b)(1)(i).)

2. Scientific Information

At the 1991 IWC meeting, the Scientific Committee agreed that the Bering-Chukchi-Beaufort Sea population of bowhead whales is between 6,400 and 9,200 animals, with a most likely estimate of 7,500 whales. A minimum estimate of the replacement yield (RY) was calculated to be 92 whales per year, and the most likely replacement yield for the population size of 7,500 is 254 whales per year. The replacement yield defines the number of new whales annually joining the adult population, and it is assumed that, all other things being constant, up to this number could be taken from the population without causing it to decline.

3. Aboriginal/Subsistence Need

The Department of the Interior (DOI) conducted its analysis of the nature and extent of aboriginal/subsistence need for bowhead whales and whaling in 1983, and the IWC adopted this method for quantifying need in 1986. DOI contracted for a new study on the quantification of subsistence and cultural need for bowhead whales in 1987, which was presented at the 1988 meeting. The new study presented the cultural and subsistence need of nine Alaska Eskimo whaling villages to take 41 landed bowhead whales. This quantification of need used the same method of calculation accepted by the IWC in 1986. This method derives the mean annual number of bowhead whales landed per capita during a specified historical period and multiplies this mean by the current Eskimo population of nine Alaska Eskimo whaling villages. The result of this calculation is the total number of bowhead whales these Eskimo whaling villages need to land each year in order to meet their cultural and subsistence need.

When the IWC adopted this method of quantifying need, members of the IWC Aboriginal Subsistence Subcommittee noted that the quantification was based on a large but incomplete series of data on historical bowhead landings. It was also noted that the quantification used an inconsistent data base period. The DOI study was initiated to correct these deficiencies. To complete the series of data on historical bowhead whale landings to the extent possible, the study undertook a comprehensive review of available published and unpublished sources of bowhead landings. Remaining gaps are unlikely to be significantly reduced with further searches for historic data on bowhead landings. The data resulting from this study also permitted the use of a consistent historical base period for the calculation of need. In the prior analysis, the base periods varied from 1940 to 1970 and 1950 to 1970. The base period now begins in 1910, the year following the cessation of commercial whaling in the Arctic, and ends in 1969, prior to the period of unusually high bowhead harvests in the unique economic circumstances of the 1970s. Therefore, applying the additional landed bowhead data and the longer period to the accepted method of quantifying need, results in a current cultural and subsistence need of 41 landed whales.

4. Domestic Harvest Range

The IWC management scheme for aboriginal/subsistence whaling provides (in Schedule paragraph 13(a)(2)): "For stocks below the maximum sustainable yield (MSY) level but above a certain minimum level, aboriginal/subsistence catches shall be permitted so long as they are set at levels which allow whale stocks to move to the MSY level." Given the above-stated estimates of replacement yields of 92 (lower bound) to 254 whales for the point estimate recruited into the population annually, an aboriginal/subsistence catch can be permitted in 1994.

The catch limit for bowhead whales for the years 1992–1994, established by the IWC, is 141 strikes plus 13 strikes carried over from the previous block quota with no more than 54 whales struck and no more than 41 landed in any one year. Of the 154 total strikes for 1992–1994, 50 bowhead whales were struck and 38 were landed in 1992, and 52 were struck and 41 landed in 1993. Therefore, the number under consideration for allocation to the Alaska Eskimo Whaling Commission for the 1994 catch limit is 52 strikes or 41 landed whales.

5. Documents Reviewed

A list of the documents reviewed for this action may be obtained on request (see **ADDRESSES**). The documents are available for public inspection during the 30-day public comment period at the same address.

(Authority: 16 U.S.C. 916, 1361–1407, 1531–43)

Dated: January 14, 1994.

D. James Baker,

Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. 94–5891 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee

March 31, 1994.

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, on March 31, 1994, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Presentation/discussion by GAO staff of the GAO derivatives study;

2. Presentation/discussion by House Banking Committee staff of Cong. Leach's proposed legislation to strengthen OTC derivatives regulation;

3. Discussion/analysis of OTC derivative issues in Congress for the upcoming year by representatives of the House Energy & Commerce Committee and Senate Banking Committee;

4. Panel Discussion of Clearing Systems for Off-Exchange Instruments, including Multinet and the CBOT's Hybrid Instrument Transaction Service;

5. Briefing by CFTC Trading and Markets staff on CFTC's proposed risk assessment rules; and

6. Wrap-up; discussion of future agenda items.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner Sheila C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Kristyn H. Burnett, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Burnett in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on March 8, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5839 Filed 3–11–94; 8:45 am]

BILLING CODE 8351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Board on the Investigative Capabilities of the Department of Defense; Change in Status of Meeting

AGENCY: Advisory Board on the Investigative Capabilities of the Department of Defense, DOD.

ACTION: Notice of Advisory Board Meeting; change in status of meeting.

SUMMARY: On March 4, 1994, the Department of Defense published a notice announcing the meeting of the Advisory Board on the Investigative Capabilities of the Department of Defense (59 FR 10378). This notice is published to announce a change in the status of the meeting. All sessions on March 17, 1994 will be open. Portions of the meeting on March 18, 1994 will be closed. This determination is based upon the consideration that it is expected that the discussions will involve classified matters of national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the closed portion of the meeting. To permit all of this Advisory Board meeting to be open to the public would prevent discussion of such matters and would greatly diminish the Board's findings or recommendations to the Secretary of Defense.

DATES AND TIMES: March 17, 1994 from 8:30 a.m.–5:30 p.m. and March 18, 1994 from 9 a.m.–12:15 p.m.

ADDRESSES: 1700 N. Moore Street, Suite 1425, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: E. Vaughn Dunnigan, Deputy Staff Director, Advisory Board on the Investigative Capabilities of the Department of Defense, 1700 N. Moore Street, suite 1420, Arlington, VA 22209; telephone (703) 696–6055.

Dated: March 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5794 Filed 3–11–94; 8:45 am]

BILLING CODE 5000–04–M

DOD Advisory Group on Electron Devices; Meetings

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, March 28, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 2011 Crystal Drive Suite 307 Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: March 9, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5843 Filed 3–11–94; 8:45 am]

BILLING CODE 5000–04–M

DOD Advisory Group on Electron Devices; Meetings

ACTION: Notice.

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, March 23–24, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: March 9, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5844 Filed 3–11–94; 8:45 am]

BILLING CODE 5000–04–M

DOD Advisory Group on Electron Devices; Meetings

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, March 22, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Part, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the

Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II § 10(d)(1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: March 9, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 94–5845 Filed 3–11–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS) in Conjunction With Proposed Maintenance Dredging of the Indiana Harbor and Canal, and the Construction of a Confined Disposal Facility (CDF) at East Chicago, in Lake County, IN

AGENCY: U.S. Army Corps of Engineers, Chicago District, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed project involves maintenance dredging of the Federal navigation channel in Indiana Harbor and Canal, and construction and operation of a confined disposal facility (CDF) for containment of contaminated sediments dredged from the harbor and canal. Approximately 4.7 million cubic yards of sediment could be dredged and confined during a 30-year maintenance period (1998 to 2027). Alternatives include (but are not limited to) dredging/disposal, no action, and innovative treatment technologies; alternative CDF locations include the ECI, J–Pit, and Inland Steel sites. Major features of the recommended plan include dredging the authorized Federal navigation channel and certain berthing areas/dockfaces adjacent to the channel, and construction of a CDF. The proposed CDF would be constructed at the site of the former Energy Cooperative, Inc. (ECI). The ECI site is located along the north bank of the Lake George Branch of the Indiana Harbor Canal, immediately west of Indianapolis Boulevard.

ADDRESSES: U.S. Army Corp of Engineers, Chicago District, 111 N. Canal St., Chicago, Illinois 60606–7206.

FOR FURTHER INFORMATION CONTACT: Mr. Keity Ryder, 312–353–7795.

SUPPLEMENTARY INFORMATION:

1. The project would provide both commercial navigation and environmental benefits. The U.S. Environmental Protection Agency is a cooperating agency.

2. Coordination regarding the assessment of impacts of the project is being undertaken with the concerned agencies, including the U.S. Environmental Protection Agency, the Indiana Department of Environmental Management, and local communities.

3. Issues to be addressed in the DEIS will include impacts of dredging, impacts of CDF construction and operation, feasibility of innovative treatment technologies, protection of Lake Michigan water quality and fisheries, protection of groundwater, impacts on local communities and industry, and future use of the facility.

4. The scoping process has been undertaken as part of a program on-going public participation and interagency coordination begun in the late 1970s. A public meeting to discuss a previous draft EIS on Indiana Harbor and Canal was held in East Chicago on 18 March 1986. Interagency scoping meetings were held on 19 May 1986, 22 April 1987, and 25 October and 12 December 1988.

5. A public meeting will be held during the 90-day public review and comment period for the DEIS.

6. The DEIS is expected to be available to the public in late March or early April 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–5800 Filed 3–11–94; 8:45 am]

BILLING CODE 3710–HN–M

DEPARTMENT OF ENERGY

Notice of Floodplain Involvement for the Proposed East Fork Poplar Creek Flow Management Project at the Oak Ridge Reservation, Oak Ridge, TN

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain involvement.

SUMMARY: DOE proposes to install an energy dissipation chamber and a raw water line in the Y–12 Plant within the East Fork Poplar Creek (EFPC) floodplain which is located in Anderson County, in the city of Oak Ridge, Tennessee. In accordance with 10 Code of Federal Regulations (CFR), part 1022, DOE will prepare a Floodplain Assessment and perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

DATES: Comments are due to the address below no later than March 29, 1994.

ADDRESSES: Comments should be addressed to: R. J. Spence, Manager, DOE Y–12 Site Office, U.S. Department of Energy, Oak Ridge Operations Office, Post Office Box 2001, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, INCLUDING A LOCATION MAP, CONTACT: Susan D. Morris, DP–813, U.S. Department of Energy, Y–12 Site Office, Post Office Box 2001, Oak Ridge, Tennessee 37831, 615–576–3545 (telephone), 615–576–8019 (fascimile).

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585,202–586–4600 or 800–472–2756

SUPPLEMENTARY INFORMATION: DOE proposes to install a concrete box with 2 weirs (obstructions placed in a stream, diverting water for measuring the rate of flow) and a raw water line to manage the flow of the EFPC. The action would take place at the headwaters of the creek, which are located within the boundaries of the Y–12 Plant. The open box would be approximately 12 by 14 feet and emplaced at the edge of the creek bank to allow for proper diffusion and mixing of the added water with creek headwaters. Additional water would be provided by extending the existing raw water line from the Clinch River. As part of the proposed action, a Best Management Practices Plan will be prepared to identify the necessary steps to minimize potential impacts to the creek.

The addition of Clinch River water to the creek is required by the Tennessee Department of Environment and Conservation in order to guarantee a minimum base flow as the limitations established in the Y–12 Plant National Pollutant Discharge Elimination System permit are based on management of the flow in the EFPC. Additional water will not be added when the flow in the creek

is above this established minimum flow, such as during storm events.

In accordance with DOE regulations, "Compliance with Floodplains/ Wetlands Environmental Review Requirements," 10 CFR part 1022, DOE will prepare a Floodplain Assessment for this proposed DOE action. After DOE issues the assessment, a Floodplain Statement of Findings will be published in the **Federal Register**.

Issued in Washington, DC, on this 7th day of March 1994.

Eugene G. Grewis,

Associate Deputy Assistant Secretary for Military Application, Defense Programs.

[FR Doc. 94–5897 Filed 3–11–94; 8:45 am]

BILLING CODE 6450–01–PM

Morgantown Energy Technology Center Financial Assistance Award (Potential Sources Sought)

AGENCY: Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Expressions of interest.

SUMMARY: The U.S. Department of Energy is seeking expressions of interest for the Office of Environmental Management Technology Leveraging Initiative. The Office of Environmental Management was established in November 1989 and was tasked with cleaning up the legacy of environmental pollution at DOE weapons complex facilities, preventing further environmental contamination, and instituting responsible environmental management. The magnitude and complexity of many aspects of this mission are such that it cannot be achieved using existing technology without incurring high costs. The technology leveraging initiative is to transfer into practice technologies developed by DOE in its national laboratories or in other agreements. It will also be beneficial to the nation if the new or improved technologies developed to clean up the DOE weapons complex facilities can be used by other government agencies and for other industrial cleanup applications. Considering that DOE and the world market needs for environmental cleanup are immense, there is a large potential market for technology transfer. Consequently, cost sharing will be a key consideration. It is anticipated that this activity will be partially DOE funded at initiation, and will mature to self sufficiency with little or no Government funding.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4241.

SUPPLEMENTARY INFORMATION: It is envisioned that the work scope will address methods for environmental technology integration and transfer, which means facilitating the licensing of DOE funded technologies, guiding the startup of new venture companies with DOE developed technologies, identifying markets and assessing the commercial potential of the DOE developed technologies, and promoting coordination between DOE and U.S.-based industry to address environmental cleanup technology development issues of mutual interest. The developed technologies are in the following focus areas: (1) Contaminant Plume Containment and Remediation, (2) Mixed Waste Characterization, Treatment, and Disposal, (3) High-Level Waste Tank Remediation, (4) Landfill Stabilization, and (5) Facility Transitioning, Decommissioning, and Final Disposition.

Interested parties should provide: statements of experience and capabilities in both the technical and business aspects specifically associated with the focus areas and work scope; your perception of the discussed activity; a name and telephone number for a point of contact; and be limited to 5 pages. Statements should be submitted to the attention of D. Denise Riggi, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880. Closing date for the submission of statements of interest is fifteen (15) days from the publication date of this notice.

This notice is for information and planning purposes, does not constitute a request for proposal and is not to be construed as a commitment by the Government to issue a solicitation or enter into an award.

Issued in Washington, DC, March 4, 1994.

Randolph L. Kesling,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 94–5898 Filed 3–11–94; 8:45 am]

BILLING CODE 6450–01–M

Notice of Public Meeting to Discuss the Environmental Assessment for Proposed Interim Storage of Highly Enriched Uranium Above the Maximum Historic Level at the Y–12 Plant, Oak Ridge, TN

AGENCY: Department of Energy (DOE).

ACTION: Notice of public meeting.

SUMMARY: DOE has scheduled a public meeting in Oak Ridge, Tennessee, on Thursday, March 24, 1994, to provide a public briefing, receive comments, and answer questions from the State of Tennessee and stakeholders on the predecisional draft Environmental Assessment (EA) for the Proposed Interim Storage of Highly Enriched Uranium (HEU) above the maximum historic levels at the Y–12 Plant, Oak Ridge, Tennessee. The Y–12 Plant, which is part of the DOE-owned Oak Ridge Reservation, located 20 miles west of Knoxville, Tennessee, has had a mission to store HEU since the World War II era. Since 1964, HEU used in the production of nuclear weapons was recycled from HEU stockpiled at the Y–12 Plant. Because the United States has now ceased production of nuclear weapons, DOE must hold its excess HEU in storage until a decision on long-term disposition is made by an interagency task force recently formed by President Clinton. The Department of Energy will also discuss its overall nuclear materials storage and disposition planning activities.

The purpose of this meeting is to provide the State of Tennessee and other stakeholders an opportunity to discuss the EA and the Department's long-term plans for disposition of special nuclear materials. All interested and affected individuals are invited to participate in the public meeting which will be held at the Pollard Auditorium, Oak Ridge Associated Universities, Oak Ridge, Tennessee, from 9 a.m. to 9 p.m. on Thursday, March 24, 1994. During the morning and afternoon sessions (9 a.m. to 5 p.m.) the Department proposes to discuss the EA and its nuclear materials disposition activities. During the evening session (6 p.m. to 9 p.m.) the morning and afternoon sessions will be summarized and the public will have further opportunity to ask questions and discuss the EA. Department of Energy officials from Oak Ridge, Tennessee, and Headquarters in Washington, DC, will be present at each of the sessions to answer questions.

FOR FURTHER INFORMATION CONTACT: Susan D. Morris, DP–183, U.S. Department of Energy, Y–12 Site Office, Post Office Box 2001, Oak Ridge, Tennessee 37831, 615–576–3545.

SUPPLEMENTARY INFORMATION: Under the Department of Energy National Environmental Policy Act Implementing Procedures (10 Code of Federal Regulations 1021.301), the Department is required to provide EAs to the host State for review prior to issuing its decision. A copy of this predecisional EA was provided to the State of Tennessee on March 2, 1994.

Notices were placed in local newspapers inviting the general public to review and provide comments to DOE on the EA. Copies of the EA were placed in the following DOE Reading Rooms:

U.S. Department of Energy, Public Reading Room, Federal Office Building, 200 Administration Road, Oak Ridge, Tennessee 37831.

The DOE Freedom of Information Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on this 7th day of March 1994.

Charles J. Beers, Jr.,

Rear Admiral, U.S. Navy, Deputy Assistant Secretary for Military Application and Stockpile Support, Defense Programs.

[FR Doc. 94–5986 Filed 3–11–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2486–002 Wisconsin]

Wisconsin Electric Power Co.; Availability of Draft Environmental Assessment

March 8, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Pine Hydroelectric Project, located on the Pine River in Florence County, Wisconsin, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NW., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. For further information, contact Tom Camp at (202) 219–2832.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5813 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG94–32–000, et al.]

EI Services Canada Limited, et al.; Electric Rate and Corporate Regulation Filings

March 8, 1994.

Take notice that the following filings have been made with the Commission:

1. EI Services Canada Limited

[Docket No. EG94–32–000]

On March 3, 1994 EI Services Canada Limited ("EI Canada") c/o Kelly A. Tomblin, Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

EI Canada states in its application that it is a Nova Scotia corporation formed to provide certain operation and maintenance services to an electric and steam generating facility to be located in Brooklyn, the Province of Nova Scotia, Canada, which facility will be owned by Brooklyn Energy Limited Partnership, a Nova Scotia limited partnership.

Comment date: March 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. AES Power, Inc.

[Docket No. ER94–890–000]

Take notice that on March 4, 1994, AES Power Inc. tendered an amendment to its earlier-filed application in this docket for approval to market capacity and energy at market-based rates.

Comment date: March 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ES94–17–000]

Take notice that on February 28, 1994, UtiliCorp United Inc. (UtiliCorp) filed an application under § 204 of the Federal Power Act seeking authorization to issue up to $1.2 million of its Common Stock (approximately 40,000 shares) for the acquisition of a heating, ventilating and air conditioning company. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Comment date: March 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 94–5830 Filed 3–11–94, 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–260–000, et al.]

Algonquin Gas Transmission Company, et al.; Natural Gas Certificate Filings

March 8, 1994.

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Company

[Docket No. CP94–260–000]

Take notice that on March 2, 1994, Algonquin Gas Transmission Company ("Algonquin"), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP94–260–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Algonquin to (i) transport gas on a pipeline lateral for Canal Electric Company ("CEC") and Montaup Electric Company ("MEC") (CEC and MEC are collectively referred to herein as "Customer") pursuant to a proposed new Rate Schedule X–40, and (ii) to construct and operate facilities necessary to perform such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin proposes to construct and operate facilities and transport on a firm basis up to 75,000 MMBtu per day of natural gas through such facilities under

a new Rate Schedule X–40 for Customer. Algonquin states that Customer intends to use the natural gas transported hereunder as fuel for Unit No. 2 of the electric generating station in Sandwich, Massachusetts. Specifically, Algonquin proposes to construct, own and operate a pipeline lateral, meter station, and appurtenant facilities (the "Canal Lateral"). Algonquin states that the Canal Lateral will extend from a point on Algonquin's existing G–8 system in Bourne, Massachusetts along the north side of the Cape Cod Canal to an agreed upon point of interconnection, at or near the Bourne/Sandwich town line, with facilities to be constructed by Customer for purposes of receiving the gas. Algonquin states that Customer is filing a contemporaneous petition for declaratory order requesting that the Commission declare its facilities to be nonjurisdictional.

Algonquin states that transportation service under proposed Rate Schedule X–40 will consist of receipt of gas at the head of the Canal Lateral and delivery to Customer's facilities at the terminus of the Canal Lateral. Algonquin states that transportation service upstream of the Canal Lateral will be provided through existing facilities under existing open access rate schedules, including firm transportation obtained through capacity release or interruptible transportation. Customer and Algonquin have executed a precedent agreement contemplating firm transportation service for a fourteen year term under proposed Rate Schedule X–40 and construction of the following facilities necessary to provide that service:

1. 4.0 miles of 18-inch pipeline extending from the interconnection of Algonquin's existing G–8 and G–11 System in Bourne, Massachusetts along the north side of the Cape Cod Canal to an agreed upon point of interconnection with facilities to be constructed by Customer at or near the Bourne/Sandwich, Massachusetts town line.

2. Line pressure measurement meter station adjacent to the existing Algonquin Sagamore Meter Station, consisting of measurement facilities with flow control capability, a remote terminal unit, and utilities for data transmission, valves and other associated equipment.

3. Expansion of the existing G–11 System tap valve site and construction of a new valve site at the upstream and downstream ends of the Canal Lateral respectively.

Algonquin states that the facilities would be constructed during the summer and fall of 1995 for an in-service date of November 1, 1995. The cost of the facilities is estimated to be approximately $7.5 million. The proposed monthly demand charge for service under Rate Schedule X–40 is $2.4986 per MMBtu.

Comment date: March 29, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources Company

[Docket No. CP94–262–000]

Take notice that on March 2, 1994, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94–262–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain facilities in Arkansas to Arkansas Louisiana Gas Company (ALG) under AER's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER states that it proposes to abandon 1,300 feet of 2-inch plastic pipe (AER's Line KM–9) and two 1-inch delivery taps in Union County, Arkansas. Line KM–9 was constructed in 1923 and certificated in AER's Grandfather Docket No. G–252, it is stated. AER says that Line KM–9 has been used to deliver gas to five ALG domestic customers in a rural area. AER states that there are no industrial or prospective industrial customers on this line. It is further stated that ALG would continue to secure the appropriate supply arrangements and provide deliveries to the rural customers. Therefore, AER says that no services to the customers would be abandoned.

Comment date: April 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Canal Electric Company and Montaup Electric Company

[Docket No. CP94–264–000]

Take notice that on March 1, 1994, Canal Electric Company, One Main Street Post Office Box 9150 Cambridge, Massachusetts 02142–9150, and Montaup Electric Company, One Liberty Square Post Office Box 2333 Boston, Massachusetts 02107, (Jointly referred to as Petitioners) filed in Docket No. CP94–264–000 a request for a declaratory order that Petitioners construction and operation of certain facilities are not subject to the Commission's jurisdiction under the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioners state that they intend to construct and operate facilities designed to receive natural gas supplies from a new lateral pipeline to be constructed by Algonquin Gas Transmission Company (Algonquin) and to deliver those gas supplies to Generating Unit No. 2 at the Canal Electric Plant located in Sandwich, Massachusetts.

Specifically, Petitioners proposes to construct, own, and operate approximately 4,600 feet of 18-inch pipeline. Petitioners state that approximately 3,300 feet of this will be located on Canal Plant property and approximately 1,300 feet will extend from the Canal Plant property to the point of interconnection with new facilities to be constructed by Algonquin. In addition, Petitioners state that they will construct appurtenant pressure regulating and heating facilities. Petitioners state that their pipeline facilities would originate on the property of the existing Canal Plant, proceed in a northwesterly direction, cross under the Cape Cod Canal, and terminate at a point located north of the Cape Cod Canal, at or near the Bourne/Sandwich town line, where they would interconnect with the interstate natural gas transmission facilities proposed for construction by Algonquin in Docket No. CP94–260–000. Petitioners state that the facilities will be constructed for the purpose of receiving supplies of natural gas for use only as fuel for Canal Unit No. 2, and will not be used to transport or sell natural gas to any third party.

Petitioners request that the Commission rule: (1) That Petitioners will not become natural gas companies subject to the jurisdiction of the Commission by virtue of their ownership and operation of pipeline facilities; (2) that Petitioners proposed facilities will not be used in interstate commerce; and (3) the service to be provided by Petitioners facilities will not occur in interstate commerce.

Comment date: March 29, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

4. Arkla Energy Resources Company

[Docket No. CP94–267–000]

Take notice that on March 4, 1994, Arkla Energy Resources Company ("AER"), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–267–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the replacement and rearrangement of existing mainline pipeline, abandonment of minor storage and gas supply facilities and certain mainline

enhancements to its pipeline system in Arkansas, Louisiana and Texas.

AER specifically proposes to do the following replacement activities: (a) Reclaim Line F in Louisiana, 87 miles of 20-inch Dresser-coupled pipe and replace it with 91 miles of 20-inch welded steel pipe and rate the MAOP to 1000 psig or greater; (b) re-route a portion of Line F in Claiborne Parish, Louisiana to connect to AER's Ruston Storage Field and abandon in place Line 1–F and Line FT–5; (c) reclassify approximately 8.2 miles of Line F in Caddo Parish, Louisiana and operate it as a low pressure gas supply line; and (d) abandon 55 inactive delivery taps and rearrange eleven existing delivery taps, all serving Arkansas Louisiana Gas Company. AER states that these replacement activities are estimated to cost $48.6 million.

AER also specifically proposes to do the following mainline enhancements: (a) Install a mainline compressor station, two 2,250 h.p. compressor units, on Line F near the Ruston Storage Field and rearrange the existing Ruston Storage Compressor unit to perform both mainline and storage operations; (b) install approximately 2.2 miles of 20-inch pipeline (Line ACT–4) at the discharge side of AER's Malvern Compressor Station on Line AC to Line S–3–S in Hot Spring County, Arkansas; and (c) uprate the MAOP on AER's Line S from 880 psig to 930 and abandon 2,208 feet of Line S in Harrison County, Texas. AER states that these mainline enhancements are estimated to cost $12.4 million.

Comment date: March 29, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, 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 a grant of the certificate and/or 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 applicant to appear or be represented at the hearing.

G. 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. 94–5832 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–306–000]

Keystone Cogeneration Service Company

March 4, 1994.

Take notice that on February 23, 1994, Keystone Cogeneration Service Company tendered for filing an amendment in the above-referenced docket.

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 Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 18, 1994. 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. 94–5831 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–3–000]

Montana Power Company; Informal Settlement Conference

March 8, 1994.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Monday, March 21, 1994, at 11 A.M. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Attendance will be limited to the parties and staff. For additional information, please contact Mark Hegerle at (202) 208–0927.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5814 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–109–010]

Williams Natural Gas Company; Proposed Change in FERC Gas Tariff

March 8, 1994.

Take notice that on March 4, 1994, Williams Natural Gas Company (WNG) tendered for filing Third Revised Sheet Nos. 6 and 6A to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date of these tariff sheets is March 1, 1994.

WNG states that it tenders the above tariff sheets for the purpose of placing an interim rate reduction of approximately $12 million into effect pending final resolution of the general rate proceeding in this docket.

WNG states that a copy of its filing was served on all participants listed on the Commission's official service list in this docket, as well as on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 15, 1994. 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 proceedings. 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. 94–5815 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4849–2]

Ozone Design Value Study of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft report on the Clean Air Act Ozone Design Value Study for public review and comment.

SUMMARY: Section 183(g) of Title I of the Clean Air Act Amendments of 1990 requires the Administrator to conduct a study of whether the methodology in use by the EPA, as of the date of enactment, for establishing a design value for ozone, provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The EPA is directed to obtain public review of the study report prior to submitting the report to Congress.

The focus of the Ozone Design Value Study is EPA's ozone design value methodology. A design value may be viewed intuitively as a concentration value used to quantify the degree to which the level of an air quality standard has been exceeded. With the wording of the ozone standard, the appropriate design value is the concentration with expected number of exceedances equal to 1. These ozone design values were used to classify areas as marginal, moderate, serious, severe, or extreme in accordance with the provisions of the 1990 Clean Air Act Amendments.

This notice announces the availability of a draft report of the Clean Air Act Ozone Design Value Study for public review and comment.

DATES: Comments must be received on or before April 14, 1994.

AVAILABILITY OF DRAFT REPORT: Single copies of the report are available from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "The Clean Air Act Ozone Design Value Study."

FOR FURTHER INFORMATION CONTACT: Mr. Warren P. Freas at (919) 541–5469, Data Analysis Section, Monitoring and Reports Branch (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Dated: March 4, 1994.

Ann E. Goode,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–5872 Filed 3–11–94; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Tuesday, March 29, 1994, from 9:30 a.m. to 12:10 p.m. The meeting will be held at Eximbank in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Advisory Committee Role and Responsibilities; Financial and Budget Status Report; Update on Reinventing Eximbank; Discussion of Topics for Future Advisory Committee Meetings; and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Loretta Carrier, Room 1112, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8893, not later than March 28, 1994. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to March 24, 1994, Loretta Carrier, Room 1112, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566–8893 or TDD: (202) 535–3913.

FURTHER INFORMATION: For further information, contact Loretta Carrier, Room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893.

Tamzen C. Reitan,

Vice President, Management Services and Human Resources.

[FR Doc. 94–5979 Filed 3–11–94; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1013–DR]

Alabama; 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 Alabama (FEMA–1013–DR), dated March 3, 1994, and related determinations.

EFFECTIVE DATE: March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 1994, 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 Alabama, resulting from severe winter storms, freezing, and flooding on January 16–February 14, 1994, 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 Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for

Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint J. Rolando Sarabia 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 Alabama to have been affected adversely by this declared major disaster: Colbert, Cullman, Dekalb, Franklin, Lauderdale, Lawrence, Limestone, Marshall and Winston Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94-5864 Filed 3-11-94; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Cambridgeport Mutual Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 7, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Cambridgeport Mutual Holding Company*, Cambridge, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Cambridge Bancorp, Cambridge, Massachusetts, and thereby indirectly acquire Cambridgeport Savings Bank, Cambridge, Massachusetts. Cambridgeport Savings Bank, upon the reorganization, will continue to participate in the Massachusetts Savings Bank Life Insurance program.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Hibernia Corporation*, New Orleans, Louisiana; to merge with Commercial Bancshares, Inc., Abbeville, Louisiana, and thereby indirectly acquire First Commercial Bank, Franklin, Louisiana.

Board of Governors of the Federal Reserve System, March 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5892 Filed 3-11-94; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire through its subsidiary, Norwest Investment Services, Inc., Minneapolis, Minnesota, the discount brokerage business of First National Bank of Detroit Lakes, Detroit Lakes, Minnesota, a subsidiary of Norwest Corporation, and thereby engage in full-service brokerage activities, government securities, and limited underwriting activities, pursuant to §§ 225.25(b)(15) and (b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5893 Filed 3-11-94; 8:45 am]

BILLING CODE 6210-01-F

Walter E. Ollech, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Walter E. Ollech, Neillsville, Wisconsin; to retain 11.01 percent of the voting shares of Withee Bank Shares, Inc., Withee, Wisconsin, and thereby indirectly acquire State Bank of Withee, Withee, Wisconsin.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. City Bankshares, Inc., ESOP; Bruce W. Day and Carl L. Short, Co-Trustees, Oklahoma City, Oklahoma, to acquire an additional 0.79 percent, for a total of 15.92 percent of the voting shares of City Bankshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire City Bank & Trust, Oklahoma City, Oklahoma.

2. Peter and Elizabeth Field, Newcastle, Wyoming, to acquire an additional 3.74 percent, for a total of 17.84 percent of the voting shares of Union Bank Corporation, Upton, Wyoming, and thereby indirectly acquire Union State Bank, Upton, Wyoming.

Board of Governors of the Federal Reserve System, March 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5894 Filed 3-11-94; 8:45 am]

BILLING CODE 6210-01-F

Shawmut National Corporation, Hartford, Connecticut, and Boston, Massachusetts; Petition for Reconsideration of the Board's decision

Shawmut National Corporation, Hartford, Connecticut, and Boston, Massachusetts (Shawmut), has filed a Petition for Reconsideration of the Board's decision dated November 15, 1993, not to approve its application to acquire New Dartmouth Bank, Manchester, New Hampshire. The Board's Rules of Procedure provide that a request for reconsideration of a Board decision must present relevant facts that for good cause shown were not previously presented to the Board.

Shawmut represents in its request that relevant facts not previously considered by the Board are now available. In particular, Shawmut refers to its settlement with the Department of Justice and the Federal Trade Commission of charges of illegal discrimination by Shawmut Mortgage Company; its improved lending record as reflected by 1993 data filed under the Home Mortgage Disclosure Act (HMDA); the results of its efforts to ensure that HMDA data are accurate; managerial and organizational changes designed to strengthen compliance; and the results of steps initiated to improve its lending to minority and low- and moderate-income communities. In light of these facts, Shawmut maintains that the Board should grant the petition and approve the proposed acquisition. Notice of the filing of the petition is published in order to seek the views of interested persons on the issues presented by the petition. The Board expects to act on the petition no later than May 2, 1994.

Comments may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments must be received not later than March 31, 1994.

The Petition for Reconsideration may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Board of Governors of the Federal Reserve System, March 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5895 Filed 3-11-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N-0007]

Revision of the Food Chemicals Codex Policy on Arsenic Specifications; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the revised Food Chemicals Codex policy on arsenic specifications. This new policy was recently approved by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex (the committee). This revised policy is intended to be implemented in the fourth edition of the Food Chemicals Codex, scheduled for release in early 1996.

DATES: Written comments and information by May 27, 1994. The committee advises that comments not received by this date cannot be considered for the fourth edition but will be considered for a later edition or supplement.

ADDRESSES: Submit written comments and information to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT:

Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202-334-2580, or

Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS-247), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9537.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to NAS/IOM to support the preparation of the Food Chemicals Codex, a compendium of specifications for substances used as food ingredients. In the **Federal Register** of July 15, 1993 (58 FR 38129), FDA announced an opportunity for public comment on the committee's revised policy on lead and heavy metals.

FDA now gives notice that the committee is soliciting comments and information on a revised policy on arsenic specifications and its proposed implementation. The revised policy is intended for implementation in the fourth edition of the Food Chemicals Codex, which is scheduled for release in early 1996. FDA emphasizes, however, that it will not consider adopting new Food Chemicals Codex monographs and monograph revisions until the public has had ample opportunity to comment on them. The opportunity for public comment on new and revised monographs will be announced in a notice published in the **Federal Register**.

The committee regards the safety of properly used food chemicals as one of its goals. This means that Food Chemicals Codex specifications will respond to advances in new manufacturing methods, analytical techniques, toxicology, and safety issues. At the same time, where possible, the committee will reduce unnecessary burdens on manufacturers and users of food ingredients. Currently, most monographs for Food Chemicals Codex substances include an arsenic limit that requires testing to ensure

compliance. The committee believes that arsenic is no longer a contemporary concern in many Food Chemicals Codex substances for the following reasons: (1) The use of arsenic-containing materials in agriculture and manufacturing has declined sharply and registrations for many arsenic-containing pesticides have been revoked; (2) the heavy metals limit for many Food Chemicals Codex substances has been significantly reduced. Because arsenic is one of the nine elements detected as a heavy metal, the test indirectly provides a safety net in those rare cases where arsenic is present; and (3) arsenic has not been associated with or detected in most Food Chemicals Codex substances with a long history of use. Therefore, the committee believes that the inclusion of arsenic limits in Food Chemicals Codex monographs should not be routine, but that inclusion of such limits should be considered on an "as needed" basis. The committee has adopted the following general policy:

The general policy for arsenic specifications in Food Chemicals Codex monographs is that an arsenic specification be included in the requirements only when there is specific reason to believe that arsenic constitutes a significant portion of the heavy metals limit.

To implement this policy in the fourth edition, the committee proposes deleting the arsenic specification from all current monographs, except for the following substances where the arsenic specification will be retained.

1. The top 25 high-volume usage ingredients, based on the 1987 NAS/NRC Food Additives Survey:
Calcium carbonate
Calcium oxide
Caramel color
Citric acid
Coconut oil
Corn oil
Corn syrup
Corn syrup solids (glucose syrup, dried)
Cottonseed oil
Cottonseed oil, partially hydrogenated
Dextrose
Diatomaceous earth
D-sorbitol
Food starch, modified
High fructose corn syrup
Lactose
Mono- and diglycerides
Sodium bicarbonate
Sodium chloride
Sodium hydroxide
Soybean oil
Soybean oil, hydrogenated
Sucrose
Sucrose, liquid
Whey

2. Ingredients that are obtained from natural sources, such as gums and mineral phosphates, including:
Acacia gum
Agar
Alginic acid
Ammonium alginate
Ammonium phosphate, dibasic
Ammonium phosphate, monobasic
Calcium alginate
Calcium phosphate, monobasic
Calcium phosphate, dibasic
Calcium phosphate, tribasic
Calcium pyrophosphate
Carrageenan
Gellan gum
Ground limestone
Guar gum
Gum ghatti
Kaolin
Karaya gum
Konjac flour
Locust (Carob) bean gum
Pectin
Perlite
Potassium alginate
Potassium phosphate, dibasic
Potassium phosphate, monobasic
Potassium phosphate, tribasic
Potassium polymetaphosphate
Potassium pyrophosphate
Potassium tripolyphosphate
Silicon dioxide
Sodium alginate
Sodium aluminum phosphate, acidic
Sodium aluminum phosphate, basic
Sodium metaphosphate, insoluble
Sodium phosphate, dibasic
Sodium phosphate, monobasic
Sodium phosphate, tribasic
Sodium polyphosphates, glassy
Sodium pyrophosphate
Sodium trimetaphosphate
Sodium tripolyphosphate
Talc
Titanium dioxide
Xanthan gum

3. Ingredients where information and/or data exist to support the inclusion of an arsenic specification.

The committee requests data and information from all interested parties suggesting other Food Chemicals Codex monographs that, for safety reasons, should retain the arsenic specification.

Two copies of written comments and information regarding this notice are to be submitted to NAS (address above). Comments may also be submitted electronically to the Food Chemicals Codex bulletin board, 202–334–1738, or transmitted by facsimile, 202–334–2316. Each submission should include the statement that it is in response to this **Federal Register** notice. NAS will forward a copy of each comment, submitted either electronically or in writing, to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, to be placed under Docket No. 94N–0007 for public review.

Dated: March 3, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–5824 Filed 3–14–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94G–0023]

Soya Oligo Japan, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Soya Oligo Japan, Inc., has filed a petition (GRASP 1G0369) proposing to affirm that soybean oligosaccharide syrup is generally recognized as safe (GRAS) when used as an ingredient in foods.

DATES: Written comments by May 30, 1994.

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: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Soya Oligo Japan, Inc., c/o 1001 G St. NW., suite 500, Washington, DC 20001, has filed a petition (GRASP 1G0369) proposing that soybean oligosaccharide syrup be affirmed as GRAS when used as an ingredient in foods.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 (21 CFR 170.30) and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the

evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before May 30, 1994, review the petition and/or file comments with the Dockets Management Branch (address above). Two copies of any comment should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether soybean oligosaccharide syrup is, or is not, GRAS for the proposed use and whether it should be listed for use as an ingredient in foods. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 1, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–5789 Filed 3–11–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

[RIN–0905–ZA06, PN 2179]

Availability of Funds for Community and Migrant Health Center Activities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of discretionary funds of approximately $617.5 million in fiscal year (FY) 1994 for Community and Migrant Health Center (C/MHC) activities including grants for the operation of C/MHCs, the Comprehensive Perinatal Care Program (CPCP) and Special Infant Mortality Reduction Initiative (SIMRI), and capital improvements.

A subsequent notice will be issued in the **Federal Register** to announce the availability of approximately $17 million to support new start and expansion grants for C/MHCs, a minimal number of planning grants for future CHCs and grants for the development and/or expansion of networking activities of C/MHCs.

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 for setting priority areas. The health center program directly addresses the Healthy People 2000 objectives by improving access to preventive and primary care services for underserved populations, especially minority and other disadvantaged populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–01) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

APPLICATION DEADLINES: Applications shall be considered to have met the deadline if they are: (1) Received on or before the deadline; or (2) sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.) Late applications not accepted for processing will be returned to the applicant. Deadlines are as follows:

SECTIONS 329 AND 330 FUNDS: Competing continuation applications for section 329 and/or Section 330 funds to provide essential services are due 120 days prior to the expiration of the current project period award unless otherwise specified. Non-competing continuation applications are due 120 days prior to the expiration of the current budget period.

CAPITAL: In order to be considered for funding, major capital applications must be received no later than April 13, 1994. Minor capital improvements will continue to be included in a project's section 329 or section 330 continuation application. Emergency supplemental requests (major or minor) may be submitted at any time during the year.

ADDRESSES: The PHS Regional Grants Management Officers (RGMOs), whose names and addresses are provided in the appendix to this document, are responsible for distributing application kits and guidance (PHS form 5161–1 with revised face sheets DHHS Form 424, as approved by the Office of Management and Budget (OMB) under control numbers 0937—0189). Completed applications must be submitted to them. The kits and guidance will be sent to existing grantees, while new applicants should contact the appropriate RGMO. The RGMOs are available to provide assistance on business management issues.

FOR FURTHER INFORMATION CONTACT: For general program information about the availability of sections 329, 330, 329(g)(1), 330(f)(1) and 333(d) funds, contact Richard C. Bohrer, (301) 594–4300. For additional information about funding under section 329, contact Antonio Duran, (301) 594–4303. Additional information about CPCP and SIMRI can be obtained from Joan Holloway, (301) 594–4420.

SUPPLEMENTARY INFORMATION:

A. General Primary Care Services Delivery

Grant Amounts

It is estimated that approximately $521 million in discretionary continuation grants for CHC activities (i.e., approximately $478 million for general primary care services delivery and $43 million for CPCP and SIMRI activities) and approximately $59 million in discretionary grants for continuation of MHC activities (i.e., approximately $57 million for general primary care services delivery and $2 million for CPCP and SIMRI activities) will be available under sections 330 and 329 of the Public Health Service (PHS) Act (42 U.S.C. 254c and 254b, respectively). Of the total $45 million available for CPCP and SIMRI activities, approximately $10 million will be for SIMRI.

In addition, approximately $16 million will be available for existing C/MHCs to support the increased cost of providing services to their current patients. Within the $16 million, approximately $10 million will be available for current service adjustments, including support for the recruitment and retention of health care providers in C/MHCs, service education linkages with academic institutions, school-based or school-linked programs, and activities to address high prevalence morbidity and mortality (e.g., HIV/AIDS). Current service adjustments, where applicable, enable C/MHCs to show the need for additional funds to maintain the existing range of services for the current number of patients when existing levels of service cannot be supported with the total Federal and non-Federal revenue. The remaining $6 million will be used for C/MHC improvement proposals to enhance the provision of required

services. Such improvement proposals should be presented in priority order. The improvement proposals for which funding may be made available include the following required services: dental, pharmacy, culturally sensitive/ translation services, and case management.

Number of Awards

A total of approximately 600 C/MHC grants will be made available, of which approximately 223 ($216 million) will be for competing continuation grants and approximately 377 ($364 million) will be for non-competing continuation grants. Approximately 300 of these grants will include CPCP and SIMRI activities. Grants will range from approximately $200,000 to approximately $2 million for general primary care services delivery (C/MHC). Grants will range from approximately $24,000 to approximately $450,000 for CPCP and SIMRI activities in C/MHCs. Awards will be made for a one year budget period. SIMRI grantees will continue to have budget periods beginning September 30 for FY 1994. Project periods will be for up to three years. Requests for current service adjustments and improvement proposals will be included in the continuation grant application.

Eligible Applicants

It is the intent of HRSA to continue to support health services in the service areas of currently funded C/MHCs, given the unmet need inherent in their designation as medically underserved. Within their project periods, only present grantees may apply for sections 329 and 330 awards to continue to provide health services in medically underserved areas. However, any nonprofit private and public entities may apply to serve the geographic areas where project periods are expiring. For a list of service areas with expiring project periods, see **Federal Register** notice published on May 3, 1993, 58 FR 26328 *et seq.*

Review Criteria

When determining whether Federal support will be made available for continuing awards, the Department will review C/MHCs for compliance with standard criteria stipulated in the program regulations (42 CFR part 51c for CHC and part 56 for MHC activities) and for how effectively they have used previously awarded sections 330 and 329 funds. This year's reviews will continue to emphasize need and community impact, health services, management and finance, and governance. Specifically, applications will be evaluated based on: (1) The demonstrated need for services based on geographic, demographic, and economic factors, resources in the area, and health status; (2) the capacity to provide primary health services as appropriate to meet the needs of the community, as evidenced by such attributes as an adequate medical provider staff (e.g., number, specialty mix, and qualifications), critical linkages to other relevant entities (e.g., State or local health departments, State Medicaid agencies, health professions training programs), and coordination with other levels of care; (3) appropriate leadership, management structures and financial systems to enable delivery of health services efficiently and effectively; (4) appropriateness of governing board composition, committee structure, and performance to enable the board to function fully and effectively in its fiduciary role; and (5) how the applicant integrates services supported by this grant with health services provided under other federally assisted programs.

B. Capital Improvements

Approximately $4.5 million will be available to support new major and minor capital improvements. Major capital requests are requests for Federal grant support in excess of $100,000 and will fall into one of two categories: (1) Proposals to correct major fire and life safety code violations; and (2) proposals to expand facilities to eliminate overcrowding associated with an increased demand for services. Major capital improvements include: facility acquisition, construction, alteration, renovation, expansion and modernization.

Minor capital improvements are requests for Federal grant support of less than $100,000. Minor capital proposals submitted in continuation applications for FY 1994 should address the same categories of projects as those to be considered for major capital projects, i.e., to correct fire and life safety code violations and to relieve overcrowding.

Emphasis will be given to capital proposals that correct existing fire and life safety code violations, particularly violations that disrupt the delivery of primary care services and may pose a danger to health center patients and staff. Fire and life safety code violations include those that are cited or clearly documented.

Review Criteria

Applications for major capital will be reviewed against the following criteria: (1) Documented community need for continued service delivery; (2) extent of the facility need; (3) appropriateness of site selection; (4) availability of other sources of proposed financing; and (5) soundness of the proposal. Awards will be issued by September 30, 1994, except for minor capital improvements which may be made sooner, depending on the nature of the building deficiency.

C. Comprehensive Perinatal Care Program and Special Infant Mortality Reduction Initiative

Eligible Applicants

All CPCP and SIMRI awards are expected to be made as continuation awards to current recipients of CPCP and SIMRI funding which are performing satisfactorily.

Review Criteria

The review criteria for CPCP continuations, including SIMRI, are: (1) The extent to which the current and proposed basic center operations are sound; (2) the extent to which infants born to the center's perinatal users are at high risk for mortality and/or morbidity; (3) the extent to which the previous CPCP funding has been used to enhance the basic perinatal services of the center, such as by provision of case management (risk assessment, coordination and referral, follow-up and tracking, crisis intervention and documentation), outreach to targeted special populations (e.g., homeless, HIV-infected, substance abusing, teenaged populations), patient education and counseling, and home visiting; (4) the capability of the center to improve perinatal health as demonstrated through various process and outcome measures of progress, such as increased perinatal caseload, increased first trimester enrollment, reduced late or absent entry into care, increased post partum return rate, reduced incidence of low birth weight, and increased newborn visits (an increase in perinatal caseload may also be a process indicator of progress in reaching out to women to get them into care early); (5) the extent to which the plan is reasonable in that it: (a) addresses the specific perinatal care needs of the community, focusing on women and infants at high risk of poor health status; (b) further develops an appropriate system of care which includes collaboration with other resources; (c) contains specific time-framed, measurable objectives, responsive to the CPCP and SIMRI expectations and the clinical measures; and (d) contains an associated budget which is appropriate for the proposal in that it is in accordance with Federal cost

principles and corresponds to the proposed activities.

Additional review criteria for SIMRI applicants include: (1) For those SIMRI grantees in Healthy Start target areas, the extent and effectiveness of collaborative efforts with the Healthy Start consortium; (2) the extent of collaborative efforts with other Federal, State and local programs to develop integrated systems of perinatal care that address the needs of the community; and (3) the extent to which the grantee's plan and progress demonstrate that SIMRI funds are being used to effectively address gaps in perinatal services throughout the community.

Other Award Information

All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kits will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for that review. Applicants (other than Federally recognized Indian Tribal governments) should contact their State Single Points of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. State process recommendations should be submitted to the appropriate Regional Office (see Appendix). The due date for State process recommendations is 60 days after the appropriate application deadline date. The Bureau of Primary Health Care does not guarantee that it will accommodate or explain its response to State process recommendations received after this date.

Public Health System Reporting Requirement

Section 329 and section 330 programs are subject to the Public Health System Reporting Requirement, PHS Circular 92.01. Reporting requirements have been approved by the OMB under control numbers 0937–0195. Under this requirement, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (1) A copy of the face page of the application (SF 424); and (2) a summary of the project (PHSIS), not to exceed one page, which provides a description of the population to be served, a summary of the services to be provided and a description of the coordination planned with the appropriate State or local health agencies.

(In the OMB Catalog of Federal Domestic Assistance, the Community Health Center program is listed as Number 93.224 and the Migrant Health Center program is listed as Number 93.246.)

Dated: January 18, 1994.

William A. Robinson,

Acting Administrator

Appendix—Regional Grants Management Officers

Region I

Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F Kennedy Federal Building, Boston, MA 02203, (617) 565–1482

Region II

Frank DiGiovanni, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278, (212) 264–4496

Region III

Martin Bree, Acting Grants Management Officer, PHS Regional Office III, P.O. Box 13716, Philadelphia, PA 19101, (215) 596–6653

Region IV

Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–2597

Region V

Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–8700

Region VI

Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202, (214) 767–3885

Region VII

Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64016, (816) 426–5841

Region VIII

Susan Jaworowski, Acting Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–4461

Region IX

Al Tevis, Acting Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595

Region X

James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121, (206) 553–7997

[FR Doc. 94–5790 Filed 3–11–94; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

State of Organization, Functions, and Delegations of Authority

AGENCY: Office of the Secretary, HHS Office of Inspector General.

ACTION: Notice.

SUMMARY: This notice amends part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services to reflect a technical change in chapter AF, Office of Inspector General (OIG). While the basic organizational structure of the OIG is unchanged, this notice reflects the transfer of personal protection services from the Office of the Secretary to the OIG, Office of Investigations.

EFFECTIVE DATE: This notice is effective on March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, (202) 619–0089.

SUPPLEMENTARY INFORMATION: Chapter AF is amended as follows:

Under the heading Section AFJ.20, Office of Investigations—Functions, subheading B. Criminal Investigations, existing paragraph 3. is redesignated as paragraph 4. and a new paragraph 3. is added to read as follows—

"3. The staff provides for the personal protection of the Secretary.

"4. The field offices conduct investigations of allegations of fraud, waste, abuse, mismanagement and violations of standards of conduct and other investigative matters within the jurisdiction of the OIG. They coordinate investigations and confer with HHS operating divisions, staff divisions, OIG counterparts and other investigative and law enforcement agencies. They prepare investigative and improvement reports."

Dated: March 2, 1994.

June Gibbs Brown,

Inspector General.

[FR Doc. 94–5797 Filed 3–11–94; 8:45 am]

BILLING CODE 4150–04–M

Office of Refugee Resettlement

Refugee Resettlement Program: Proposed Allocations to States of FY 1994 Funds for Refugee Social Services and for Refugees Who Are Former Political Prisoners From Vietnam

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Notice of proposed allocations to States of FY 1994 funds for refugee [1] social services and for refugees who are former political prisoners from Vietnam.

SUMMARY: This notice announces the proposed allocations to States of FY 1994 funds for social services under the Refugee Resettlement Program (RRP). In order to help meet the special needs of former political prisoners from Vietnam, the Director proposes to add to the formula allocation $2,000,000 in funds previously set aside for social services discretionary projects. In the final notice, allocation amounts could be adjusted after considering comments and evidence from States on population estimates. This notice proposes to eliminate the set-aside for mutual assistance associations (MAAs) as a separate component of the social service allocations.

[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

EFFECTIVE DATE: Comments on the proposals contained in this notice must be received by April 13, 1994.

ADDRESSES: Address written comments, in duplicate, to: Toyo A. Biddle, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed For Allocation

The Office of Refugee Resettlement (ORR) has available $80,802,000 in FY 1994 refugee social service funds as part of the FY 1994 appropriation for the Department of Health and Human Services (Pub. L. No. 103–112).

Of the total of $80,802,000, the Director of ORR proposes to make available to States $68,681,700 (85%) under the allocation formula set out in this notice. These funds would be made available for the purpose of providing social services to refugees. In addition, the Director of ORR proposes to make available $2,000,000 from discretionary social service funds to be allocated under the formula in this notice for additional services to former political prisoners from Vietnam. The allocation amounts proposed in this notice could be adjusted slightly in the final notice after taking into consideration any population adjustments (see Section VI, below). ORR intends FY 1994 to be the last year in which a special set-aside will be allocated for additional services for former political prisoners from Vietnam.

A. Discretionary Social Service Funds for Vietnamese Political Prisoners

In recognition of the special vulnerability of refugees who are former political prisoners from Vietnam, the Director of ORR proposes to set aside $2,000,000 from discretionary social service funds to be allocated under the formula set forth in this announcement, based on the number of actual political prisoner arrivals in FY 1993. This formula allocation is shown separately in Table 1 (cols. 7 and 8). States are required to use this allocation to provide additional services, as described below, to recent arrivals from Vietnam who are former political prisoners and members of their families.

Allowable services for the above-cited funds for political prisoners include the following direct services: (1) Specialized orientation and adjustment services, including peer support activities; and (2) specialized employment-related services, as needed. Under no circumstances may these funds be used for direct cash payments or stipends, or for the purchase of advertising space or air time.

Allowable services under this allocation for Vietnamese political prisoners are intended to supplement, not to supplant, those services provided to refugees in general under the social service formula allocation, discussed below.

ORR intends to provide technical assistance to States and organizations that request it to assure effective program development and implementation.

Because these funds are proposed to provide specifically for services for former political prisoners from Vietnam, States which allocate social service funds to other local administrative jurisdictions, such as counties, shall do so for these funds, using a formula which reflects recent and anticipated arrivals of this target population only.

ORR strongly encourages States and other contracting jurisdictions, in selecting service providers for the above, to award these funds, to the extent possible, to qualified refugee mutual assistance associations with experience serving the target population. All contractors receiving these funds should have Vietnamese language capacity and Vietnamese cultural understanding.

States are required to provide to ORR program performance information on the Vietnamese political prisoner program that meets the reporting requirements contained in 45 CFR 92.40, under the terms and conditions of the social services grant awards to States. This information, to be contained in the narrative portion of State quarterly performance reports, must indicate: (1) Name of service contractors; (2) categories of activities provided; (3) numbers of persons and types (former prisoners, family members, etc.) served; and (4) outcomes, to the extent possible.

B. Refugee Social Service Funds

The population figures for the social service allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

The Director proposes to allocate $68,681,700 to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1,

1993 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations will be calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

The $12,120,300 in remaining social service funds (15% of the total funds available) is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. Grant announcements on discretionary initiatives will be issued separately.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, in accordance with the requirements of 45 CFR part 400 Subpart I—Refugee Social Services, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. In keeping with 45 CFR 400.147(a), a State must allocate an appropriate portion of its social service funds, based on population and service needs, as determined by the State, for services to newly arriving refugees who have been in the U.S. less than one year.

While 45 CFR 400.147(b) requires that in providing employability services, a State must give priority to a refugee who is receiving cash assistance, social service programs should not be limited exclusively to refugees who are cash assistance recipients. If a State intends to provide services to refugees who have been in the U.S. more than 3 years, 45 CFR 400.147(c) requires the State to specify and justify as part of its Annual Services Plan those funds that it proposes to use to provide services to those refugees.

ORR expects States to ensure that refugee social services are provided to special populations such as Amerasians and former political prisoners from Vietnam, in addition to special funding that ORR may designate to address the special needs of these populations.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations at 45 CFR 400.208, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. No. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

Refugee social service funding should be used to assist refugee families to achieve economic independence. To this end, ORR expects States to ensure that a coherent plan of services is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. Each service plan should address a family's needs for both employment-related services and other needed social services.

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. Refugees who are participating in employment services or have accepted employment are eligible for day care services. For an employed refugee, day care funded by refugee social service dollars must be limited to one year after the refugee becomes employed. States are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, if a State's cash assistance dependency rate for refugees (as defined in section 400.146(b)) is 55% or more, funds awarded under this notice (with the exception of the political prisoner set-aside) are subject to a requirement that at least 85% of the State's award be used for employability services as set forth in section 400.154. ORR expects these funds to be used for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs in less than one year as part of a plan to achieve self-sufficiency. This reflects the Congressional objective that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" and that social service funds be focused on "employment-related services, English-as-a-second-language training (in non-work hours where possible), and case-management service" (INA, section 412(a)(1)(B)). If refugee social service funds are used for the provision of English language training, such training should be provided concurrently, rather than sequentially, with employment or with other employment-related services, to the maximum extent possible. ORR also encourages the continued provision of services after a refugee has entered a job to help the refugee retain employment or move to a better job.

Since current welfare dependency data are not available, those States that historically have had dependency rates at 55% and above are invited to submit a request for a waiver of the 85% requirement if they can provide reliable documentation that demonstrates a lower dependency rate.

ORR will consider granting a waiver of the 85% provision if a State meets one of the following conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that the dependency rate of refugees who have been in the U.S. 24 months or less is below 55% in the State.

2. The State demonstrates to the satisfaction of the Director that (a) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees and (b) there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. Or

3. In accordance with section 412(c)(1)(C) of the INA, the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

Refugee social services should be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. To the maximum extent possible, particularly during a refugee's initial years of resettlement, refugee social services should be provided through a refugee-specific system rather than through a system in which refugees are only one of many client groups being served. When planning State refugee services, States are strongly encouraged to take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless services to refugees.

In order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR encourages States and counties to promote and give special consideration to the provision of refugee social services through coalitions of refugee service organizations, such as coalitions of MAAs, voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HSS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts established in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Funding to MAAs

ORR proposes to eliminate the set-aside for refugee mutual assistance associations as a separate component under the social service notice and proposes instead to fold these funds into the social service formula allocation to States. ORR believes that the continued and/or increased utilization of qualified refugee mutual assistance associations in the delivery of social services helps to ensure the provision of culturally and linguistically appropriate services as well as increasing the effectiveness of the overall service system. Therefore, at a minimum, ORR expects States to continue to award refugee social service funds to MAAs at a level comparable to the MAA set-aside level in previous years. In addition, ORR strongly encourages States when contracting for services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

State Administration

States are reminded that under current regulations at 45 CFR 400.206 and 400.207, States have the flexibility to charge the following types of administrative costs against their refugee program social service grants, if they so choose: Direct and indirect administrative costs incurred for the overall management and operation of the State refugee program, including its coordination, planning, policy and program development, oversight and monitoring, data collection and reporting, and travel. See also State Transmittal No. 88–40.

II. [Reserved for Discussion of Comments in Final Notice]

III. Allocation Formula

Of the funds available for FY 1994 for social services, $68,681,700 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1993,

adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State. Minimum allocations for small States are taken into account.

Allocations for political prisoners are based on FY 1993 arrival numbers for this group in each State from the Refugee Data Center and are limited to States with 170 or more political prisoner arrivals. We have limited the population base to FY 1993 political prisoner arrival numbers because these funds are intended to serve recent arrivals. We have not included States with fewer than 170 former political prisoners in the political prisoner allocations formula because the resulting level of funding would be insignificant. In these States, we believe the small number of political prisoners could be adequately served under the State's refugee social services program.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1994 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1993, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, and Cuban and Haitian entrants.

For fiscal year 1994, ORR's formula allocations for the States for social services are based on the number of refugees and Amerasians who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1991, 1992, and 1993, based on final arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1990, and September 30, 1993, who are thought to be living in each State as of October 1, 1993. Refugees admitted under the Federal Government's private-sector initiative are not included, since their assistance and services are to be provided by the private sponsoring organizations under an agreement with the Department of State.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11. The total migration reported by each State was summed, yielding in- and-out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate. Because the reporting period covered on Form ORR–11 was a maximum of only 8 months as of June 1993 for the majorigy of States whose reporting base was their cash/medical assistance caseload, extra weight was given to the secondary migration reported by those States to arrive at estimates of secondary migration over a 36-month period. In 1993, no count of recently-arrived refugee children was available from the Department of Education for use as a comparison.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1993, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); and the proposed allocation amounts after allowing for the minimum amounts (col. 5). Table 1 also shows the number of former political prisoner arrivals in FY 1993 (col. 6); and the allocation amounts for services to this population (col. 7).

These population estimates and proposed allocation amounts are intended to be as close to the final figures as was possible at the time they were developed. However, revisions may need to be made, based on data submitted by States in accordance with Section VI of this notice, and all population estimates and allocation amounts may change somewhat as a result.

A detailed explanation of the development of data used in this formula allocation can be obtained by writing to the address indicated in Section VI of this notice.

V. Proposed Allocation Amounts

Funding will be contingent upon the submittal and approval of a State annual services plan. The following amounts are proposed for allocation for refugee social services in FY 1994.

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1994; AND FORMER POLITICAL PRISONER ARRIVALS AND PROPOSED ALLOCATIONS FOR FY 1994*

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	Former political prisoner arrivals from Vietnam in FY 1993 (6)	Former political prisoner proposed allocation (7)
Alabama	894	19	913	$163,830	$163,830	39	$0
Alaska	134	0	134	24,045	75,000	14	0
Arizona	4,052	40	4,092	734,276	734,276	183	16,029
Arkansas	296	0	296	53,115	94,143	64	0
California	96,259	499	96,758	17,362,427	17,362,427	10,279	900,324
Colorado	3,541	2	3,543	635,762	635,762	230	20,145
Connecticut	3,413	75	3,488	625,893	625,893	130	0
Delaware	112	12	124	22,251	75,000	6	0
District of Columbia	2,883	18	2,901	520,561	520,561	181	15,854
Florida	12,916	15,989	28,905	5,186,764	5,186,764	546	47,823
Georgia	8,833	51	8,884	1,591,161	1,594,161	1,294	113,340
Hawaii	906	0	906	162,574	162,574	119	0
Idaho	897	4	901	161,677	161,677	111	0
Illinois	13,540	102	13,642	2,447,945	2,447,945	358	31,357
Indiana	1,162	6	1,168	209,588	209,588	73	0
Iowa	3,173	2	3,175	569,728	569,728	250	21,897
Kansas	2,006	3	2,009	360,499	360,499	282	24,700

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1994; AND FORMER POLITICAL PRISONER ARRIVALS AND PROPOSED ALLOCATIONS FOR FY 1994 [a]—Continued

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	Former political prisoner arrivals from Vietnam in FY 1993 (6)	Former political prisoner proposed allocation (7)
Kentucky	1,918	16	1,934	347,040	347,040	159	0
Louisiana	2,516	58	2,574	461,883	461,883	306	26,802
Maine	630	0	630	113,048	113,048	4	0
Maryland	7,456	174	7,630	1,369,141	1,369,141	342	29,955
Massachusetts	10,985	294	11,279	2,023,924	2,023,924	601	52,641
Michigan	7,242	38	7,280	1,306,336	1,306,336	241	21,109
Minnesota	7,471	0	7,471	1,340,609	1,340,609	421	36,875
Mississippi	178	0	178	31,941	75,000	19	0
Missouri	5,195	26	5,221	936,865	936,865	330	28,904
Montana	345	0	345	61,907	100,000	0	0
Nebraska	2,259	0	2,259	405,359	405,359	215	18,832
Nevada	841	168	1,009	181,057	181,057	38	0
New Hampshire	572	0	572	102,641	102,641	88	0
New Jersey	7,563	496	8,059	1,446,121	1,446,121	262	22,948
New Mexico	1,093	164	1,257	225,558	225,558	39	0
New York	65,309	760	66,069	11,855,538	11,855,538	527	46,159
North Carolina	3,551	22	3,573	641,145	641,145	177	15,503
North Dakota	1,049	0	1,049	188,234	188,234	48	0
Ohio	6,064	39	6,103	1,095,133	1,095,133	164	0
Oklahoma	1,633	1	1,634	293,208	293,208	288	25,226
Oregon	5,944	58	6,002	1,077,009	1,077,009	373	32,671
Pennsylvania	11,066	86	11,152	2,001,135	2,001,135	353	30,919
Rhode Island	1,066	11	1,077	193,259	193,259	3	0
South Carolina	454	2	456	81,825	100,000	79	0
South Dakota	830	0	830	148,937	148,937	0	0
Tennessee	3,324	32	3,356	602,207	602,207	196	17,167
Texas	16,762	178	16,940	3,039,744	3,039,744	2,272	199,001
Utah	1,772	0	1,772	317,971	317,971	135	0
Vermont	723	0	723	129,736	129,736	16	0
Virginia	6,222	22	6,244	1,120,434	1,120,434	805	70,509
Washington	19,220	1	19,221	3,449,050	3,449,050	1,522	133,310
West Virginia	85	0	85	15,253	75,000	0	0
Wisconsin	4,817	1	4,818	864,550	864,550	22	0
Wyoming	0	0	0	0	75,000	0	0
Total	361,172	19,469	380,641	68,302,894	68,681,700	24,204	2,000,000

[a] Based on arrivals through September 30, 1993.

VI. State Evidence on Refugee Population

If a State wishes ORR to reconsider its population estimate, it should submit written evidence. Requests will be evaluated according to a strict standard. The following evidence should be provided:

- Documentation and discussion should be confined to the population entering the United States during the fiscal years 1991, 1992, and 1993, and should clearly identify what refugee or entrant groups are being discussed.
- Documentation should include a list of refugees identified by name, alien number, date of birth, date of arrival, and case size, if appropriate. Listings of refugees who are not identified by their alien numbers will not be considered. Data should be submitted in machine readable form, preferably in ASCII format on diskette.

Any State evidence on population estimates should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addressed to: Loren Bussert, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW. Washington DC 20447. Telephone: (202) 401–4732.

VII. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: March 4, 1994.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 94–5823 Filed 3–11–94; 8:45 am]

BILLING CODE 4184–01–M

Public Health Service

National Vaccine Advisory Committee, Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

Correction: On March 1, 1994 (59FR9761), a notice was published announcing the meeting of an Ad Hoc Subcommittee on Childhood Vaccines. Under Open Committee Discussion we are adding an agenda item, the most recent report entitled "DPT Vaccine and

Chronic Nervous System Dysfunction: A New Analysis".

The rest of the notice remains as published.

Dated: March 7, 1994.

Chester A. Robinson,

Acting Executive Secretary, NVAC.

[FR Doc. 94–5792 Filed 3–11–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–94–4333–04; 4–00154 I–LM]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of certain public lands in Carson City, Lyon and Douglas Counties on and adjacent to two Off Highway Vehicle race courses:

April 22–24, 1994—High Sierra Motorcycle Club.
Carson Valley Qualifier—Permit Number NV–03516–94–06.
May 6–8, 1994—Western States Racing Association.
Virginia City Grand Prix—Permit Number NV–03516–94–03.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety and to protect adjacent resources during the official running of the Carson Valley Qualifier National Reliability Enduro Motorcycle Race and the Virginia City Grand Prix Motorcycle Race.

EFFECTIVE DATES: April 22–24, 1994; May 6–8, 1994.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. Each permittee is required to clearly mark and monitor the event route during the closure period. Spectators shall remain in safe locations as directed by event officials and BLM personnel. Specific information on each event follows:

1. High Sierra Motorcycle Club Carson Valley Qualifier, Permit Number NV–03516–94–06. This event is located on roads and trails in the Pine Nut Mountains near Gardnerville, Carson City and Dayton, Nevada in Douglas, Carson City and Lyon Counties within T13N R20E; T13N R21E; T14N R20E; T14N R21E; T14N R22E; T15N R20E; T15N R21E; T15N R22E; T16N R21E; T16N R22E. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground as the 1994 Carson Valley Qualifier except at designated pit and spectator areas. Brunswick, Sand and Eldorado Canyon Roads will be closed to through traffic; Sunrise Pass Road will have traffic regulated. This closure will be effective from 6 p.m. April 22 to 4 p.m. April 24, 1994. Spectators are welcome at the main Start/Finish area at Carson Valley Inn, Minden.

Camping on public lands within the vicinity of and in conjunction with the race shall be prohibited.

2. Western States Racing Association Virginia City Grand Prix—Number NV–03516–94–03. Multiple-lap motorcycle race on roads and trails near Virginia City, Nevada in Storey County within T17N R21E sections 21–29, 32–36 and T16N R21E sections 2–5. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground at the 1994 Virginia City Grand Prix Motorcycle Race route except at designated pit and spectator areas. The main spectator/pit area is located in Virginia City at the Old Railroad Depot.

Camping on public lands within the vicinity of and in conjunction with the race shall be prohibited.

This closure will be in effect from 6 p.m. on May 6 through 4 p.m. on May 8, 1994.

The above restrictions do not apply to race officials, law enforcement and agency personnel, or BLM personnel monitoring the event.

Authority: 43 CFR part 8340; 43 CFR part 8360 and 43 CFR part 8370.

Penalty: Any person failing to comply with the closure order may be subject to the penalties provided in 43 CFR 8360.07.

Dated: March 2, 1994.

James W. Elliott,

District Manager.

[FR Doc. 94–5640 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–HC–M

[NM–070–04–4333–02]

Closure of Lands to Discharge of Firearms

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of use restrictions.

SUMMARY: In order to decrease conflict between recreationists and better provide for the safety of the public, use restrictions are announced by the Farmington District.

Effective immediately, the discharge of any type of firearm for any purpose is prohibited in the Dunes Vehicle Recreation Area and Head Canyon ORV Competition Area.

SUPPLEMENTARY INFORMATION: Since the discharge of firearms presents both a safety hazard to and recreational conflict with other users of these Special Management Areas, the following areas are hereby closed to the discharge of firearms at any time for any purpose:

Dunes Vehicle Recreation Area

T.29 N., R. 13 W., NMPM,
Sec. 19, Lots 19–23;
Sec. 20, SW¼ west of New Mexico State Highway 371;
Sec. 29, All below elevation of 5800';
Sec. 30, All;
Sec. 31, All below elevation of 5800'.

Head Canyon ORV Competition Area

T. 29 N., R. 13 W., NMPM,
Sec. 33, NW¼NW¼, S½NW¼, SW¼.

Total area affected by these closures is approximately 1,150 acres. Authority for these closures is found in 43 CFR 8364. Any person who fails to comply with a closure issued under 43 CFR 8364 may be subject to the penalties provided in 43 CFR 8360.0–7: Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Christopher Barns, BLM, Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401; 505–599–6300.

Dated: March 5, 1994.

Mike Pool,

District Manager, Farmington District.

[FR Doc. 94–5798 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–FB–M

[ES–930–4410–01] ES–046823, Group 198, Florida]

Filing of Plat of the Dependent Resurvey and Survey of Lots 12, 13 and 14 in Section 31

The plat of the dependent resurvey of a portion of the north boundary of section 31, and the survey of Lots 12, 13 and 14 of section 31, and the survey of a portion of the rights-of-way of Highway U.S. No. 1 and County Road No. 707, Township 40 South, Range 43 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 22, 1994.

The survey was made upon request by the Eastern States, Bureau of Land Management, Division of Lands and Renewable Resources. All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, VA 22153, prior to 7:30 a.m., April 22, 1994.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 2, 1994.

[FR Doc. 94–5804 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–GJ–M

Geological Survey

Grants and Cooperative Agreements; Availability, etc.: National Spatial Data Infrastructure Competitive Cooperative Agreements Program (NSDICCAP) for Fiscal Year (FY) 1994

AGENCY: Geological Survey, Interior.

ACTION: Notice inviting applications for competitive cooperative agreement awards for fiscal year 1994.

SUMMARY: The purpose of the FGDC National Spatial Data Infrastructure Competitive Cooperative Agreements Program (NSDICCAP) is to facilitate and foster partnerships and alliances within and among various public and private entities to assist in building the NSDI. The NSDI consists of policies, standards, agreements, and partnerships among a variety of sectors and disciplines that will promote more cost-effective production, ready availability, and greater use of high quality geospatial data. The NSDICCAP is intended to encourage resource-sharing projects, between and among the public and private sector through the use of technology, networking, and enhanced interagency coordination efforts. Proposals must involve two or more organizations, and participants are expected to cost share in the project. Activities initiated under this program will promote development and maintenance of and access to data sets that are needed for national, regional, State, and local analyses. Authority for this program is contained in the Department of the Interior and Related Agencies Appropriations Act of 1994, Public Law 103–138.

Applications may be submitted by State and local government agencies, educational institutions, private firms, private foundations, and Federally acknowledged or State-recognized Native American tribes or groups.

DATES: The program announcement and application forms are expected to be available on or about March 20, 1994. Applications must be received on or before May 10, 1994.

ADDRESSES: Copies of Program Announcement 8071 may be obtained by writing to Kathleen Craig, U.S. Geological Survey, Office of Procurement and Contracts, Mail Stop 205A, 12201 Sunrise Valley Drive, Reston, Virginia 22092, (703) 648–7357.

FOR FURTHER INFORMATION CONTACT: Jennifer Snyder, FGDC, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone number (703) 648–5514; facsimile (703) 648–5755. Internet "gdc@usgs.gov".

SUPPLEMENTARY INFORMATION: Under this FY 1994 program announcement, proposals are to be directed towards two components of the NSDI. The first component deals with creation of a distributed clearinghouse for finding and accessing geospatial data. The second component involves development and promulgation of the use of standards in data collection, documentation, transfer, and search and query. The following list of efforts is considered within the scope of the two aforementioned activities, and are intended to serve as general parameters for consideration when developing proposals: Component I. Development and implementation of the National Geospatial Data Clearinghouse: Create (inventory, evaluate, catalog data, and establish Internet access) and manage a node on the National Geospatial Data Clearinghouse that provides users with a means for finding, accessing, and sharing data; increase use and awareness of geospatial data available over Internet through development of training programs, information guides and other explanatory materials in support of a National Geospatial Data Clearinghouse; and, establish, develop, or expand programs or projects that improve local, regional, or national access to geospatial data to the government, public and private sector. Component II. Develop and further the implementation of FGDC-endorsed standards: Conduct programs to increase user comprehension and adoption of the FGDC Metadata Standard and the Spatial Data Transfer Standard; test and evaluate existing and proposed geospatial data standards; and, stimulate the development of geospatial data standards for consideration by the FGDC.

Dated: March 3, 1994.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 94–5799 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Santa Rosa Island Development Concept Plan; Channel Islands National Park; Availability of Draft Environmental Impact Statement

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed Development Concept Plan for Santa Rosa Island, Channel Islands National Park, Santa Barbara County, California.

The draft plan proposes the development of infrastructure and facilities to support maintenance and protection of resources and historic structures, research and further study of both natural and cultural resources, limited experimental restoration of natural systems, and the provision of limited visitor use opportunities. Maintenance and housing facilities would be provided in two locations. One alternative is evaluated, that of no action, which would maintain existing housing, provide minimal maintenance of facilities to provide for basic health and safety of visitors and employees, and provide essential resource protection with minimal research and planning for restoration of natural systems.

SUPPLEMENTARY INFORMATION: Written comments on the draft Development Concept Plan and DEIS will be accepted until May 31, 1994 and should be sent to the Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, Ca. 93001. A public meeting on the plan will be held April 27, 1994, from 7 p.m. to 9 p.m., at the park visitor center located at the above address. National Park Service officials will be available at this time to present the plan, receive oral and written comments, and answer questions.

Copies of the draft plan and DEIS are available at the park headquarters at the above address. Copies are also available for inspection at libraries located in the park's vicinity and at the Western Regional Office, National Park Service, 600 Harrison St., suite 600, San Francisco, Ca. 94107–1372.

Inquiries on the DEIS should be directed to the superintendent at the above address or at (805) 658–5700.

Dated: February 28, 1994.

Lew Albert,

Acting Regional Director, Western Region.

[FR Doc. 94–5899 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–70–P

Gettysburg National Military Park Advisory Commission

AGENCY: Gettysburg National Military Park Advisory Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the tenth meeting of the Gettysburg National Military Park Advisory Commission.

DATES: April 21, 1994.

TIME: 7 p.m.–9 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Holiday Inn, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, review of final Land Protection Plan, briefings on Resource Management Plan, Eisenhower Barn reconstruction, Federal Highway project, Fiscal 94 park budget, Clean Cities Project, and an operational update on park activities.

FOR FURTHER INFORMATION CONTACT: Jose A. Cisneros, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

B.J. Griffin (Ms.),

Regional Director, Mid-Atlantic Region.

[FR Doc. 94–5873 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Directed Service Order No. 1515]

Cedar River Railroad Co.—Directed Service Order—Charles City Railway Lines Inc.

The Charles City Railway Lines, Inc. (CCRY), a 3.6 mile railroad in Charles City, Iowa, with connections to the Cedar River Railroad Company (CRR) and the Soo Line Railroad Company (SOO) was shut down by its management effective with the close of business February 24, 1994, due to a lack of operating funds, and has been out of operation since that time. CCRY, based on its letter to shippers dated February 4, 1994 announcing cessation of operations effective February 24, 1994, placed Embargo No. 1–94, dated 2/14/94, which was effective 2/24/94. There are two principal shippers located on the CCRY.

The Commission was first contacted about the impending shutdown of the CCRY on February 10, 1994, by shippers on the line, and on February 16, 1994, by the Iowa Department of Transportation (IDOT) indicating their concerns for the possible shutdown of the railroad and requesting that the Commission consider issuing a directed service order (DSO). IDOT's petition of February 16, 1994, requested the Commission to initiate voluntary directed service over the CCRY lines and indicated that the CRR was willing to operate the CCRY lines as a "Directed Rail Carrier" (DRC). However, it was not until February 28, 1994, that the CRR indicated its willingness to provide the uncompensated directed service operations sought by IDOT and the two affected shippers.

Section 11125(a) of the Interstate Commerce Act authorizes the Commission to act in situations where it finds that *a rail carrier cannot transport traffic offered to it because—(1) its cash position makes its continuing operation impossible; (2) transportation has been discontinued under court order; or (3) it has discontinued transportation without obtaining a required certificate under 49 U.S.C. 10903* (emphasis added). The initial period for the directed service order may not exceed 60 days. However, the order may be extended for an additional period not to exceed 180 days.

Under a directed service order from the Commission, a directed carrier may voluntarily choose to provide directed service without any subsidy or compensation to which it may be entitled from the Commission, as CRR has done here. See St. Louis S.W. Ry. Co—Directed Service—Chicago, 363 I.C.C. 1 (1980), and Directed Service Order No. 1504, The New York, Susquehanna and Western Railway Corporation—Directed Service—The Delaware and Hudson Railway Company, (not printed) served June 22, 1988.[1]

Considering the limited nature of the proposed directed service operation, e.g., only two active shippers on the 3.6 mile CCRY line, CRR has asked that in order for CRR to waive all compensation from the Federal government otherwise applicable under 49 U.S.C. 11125(b)(5), that it be allowed to condition it's offer to provide uncompensated directed service by limiting its initial 60-day operation to only those portions of the CCRY lines that CRR determines can be safely operated; that CRR not be required to improve any CCRY lines that it believes are unsafe to operate; that it be allowed to perform needed switching service to shippers using crews from its through trains, and that it be allowed to utilize CCRY maintenance of way employees in conjunction with its own employees only to the extent practicable for its limited operations.

Considering CCRY's cessation of service without alternative and its apparent inability to continue due to its cash position, we find that CCRY's current situation meets the standards of 49 U.S.C. 11125(a)(1) and (3).

In view of the need for continued rail service over CCRY's lines and CRR's willingness to provide directed service without compensation from the Federal government, this decision grants the requests of interested parties for interim service authority to CRR.

The emergency nature of the situation compels us to conclude that advance public notice and hearings would be impractical and contrary to the immediate public interest in assuring the immediate resumption of essential rail transportation services. Accordingly, we exercise our authority under 49 U.S.C. 11125(a) to waive advance public notice in the present circumstances.

Section 11125 permits us to direct service for an initial period of not more than 60 days, with an option to extend the directed service period for an additional 180 days, if cause exists. We believe directed service authority to be necessary here at least for an initial 60 day period. Any interested person may file comments on this action during this period.

We Find

1. CCRY had discontinued service over all of its lines. CRR has requested the Commission to permit it to provide continued rail service over those lines which it considers to be operable.

2. To prevent transportation and economic disruptions due to CCRY's ceased operations, and to assure the immediate continued movement of commodities, some of which may be perishable, it is necessary for the Commission to authorize CRR to operate CCRY's lines at Charles City, Iowa under 49 U.S.C. 11125, conditioned

[1] Likewise, the Commission may authorize directed service without provision for compensation to the carrier over which service is directed. Kansas City Terminal Ry. Co.—Operate—Chicago R.I.&P., 360 I.C.C. 289 (1979).

upon a waiver of any compensation or subsidy from the Federal government.

3. Our action in this decision will not substantially impair the ability of CRR to serve its own patrons adequately, or meet its outstanding common carrier obligations, see 49 U.S.C. 11125(b)(2)(B), and will assure continued rail service to affected shippers.

This action will not significantly affect either the quality of the human environment or energy conservation.

It Is Ordered

1. Based upon its undertaking to do so without any form of compensation from the Federal government, CRR is authorized to enter upon and operate CCRY's lines at Charles City, Iowa pursuant to this voluntary directed service order under 49 U.S.C. 11125.

(a) Entry by CRR on the lines of CCRY may occur on the date and time authorized in this decision. Operations by CRR may continue no later than the sixtieth day from the effective date of this decision.

(b) CRR shall immediately notify the Commission, CCRY, and SOO, in writing, of the date on which it commences operations under this order.

2. Operations performed under authority of this order shall conform to the directions and conditions prescribed above.

3. All submissions filed in this proceeding should refer to DSO No. 1515 and be sent to the Commission's headquarters at 12th Street and Constitution Avenue, NW., Washington, DC 20423. An original and 10 copies should be submitted.

4. The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

5. The Commission retains jurisdiction to modify, supplement, or reconsider this decision at any time.

6. Notice to the general public of this decision shall be given by publication in the **Federal Register**. The decision will be served on the Federal Railroad Administration, the Association of American Railroads, American Short Line Railroad Association, CRR, CCRY, SOO, and the IDOT.

7. This decision and order shall become effective at 12:01 a.m., on March 7, 1994.

8. Unless otherwise modified by the Commission, this order will expire at 11:59 p.m., on May 5, 1994.

Decided: March 4, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioner Simmons and Philbin.

Sidney L. Strickland,

Secretary.

[FR Doc. 94–5871 Filed 3–11–94; 8:45 am]

BILLING CODE 7035–01–P–M

[Finance Docket No. 32457]

Port Railroads, Inc.—Lease and Operation Exemption—Southern Pacific Transportation Company

Port Railroads, Inc. (PRI), a noncarrier subsidiary of Kyle Railways, Inc. (Kyle) has filed a notice of exemption to lease and operate approximately 107.438 miles of railroad lines of the Southern Pacific Transportation Company in Fresno and Kern Counties, CA.

The lines involved in the lease transaction consist of: (1) The West Side Line: Between milepost 207.138 on the west leg of the wye and milepost 207.260 on the east leg of the wye, at Fresno, CA, and the end of the line at milepost 159.60 at Oxalis, CA; (2) the Riverdale Branch: Between milepost 182.003 at Ingle, CA, and the end of the line at milepost 208.73 at Burrell, CA; and (3) the Buttonwillow Branch: Between milepost 313.649 on the west leg of the wye and milepost 314.020 on the east leg of the wye, at Kern Junction in Bakersfield, CA, and the end of line at milepost 347.00 at Buttonwillow, CA. The parties expected to consummate the proposed transaction on or after March 6, 1994.

This proceeding is related to Finance Docket No. 32458, Kyle Railways, Inc.—Continuance in Control Exemption—Port Railroads, Inc., wherein Kyle has concurrently filed a petition for exemption to continue in control of PRI and seven other railroads upon PRI becoming a railroad.

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Esq., suite 120, 1101 30th St., NW., Washington, DC 20007.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5870 Filed 3–11–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau; Commission on Family and Medical Leave; Meeting

AGENCY: Office of Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on Family and Medical Leave was established by an Act of Congress, the Family and Medical Act, Public Law 103–3.

TIME AND PLACE: The meeting will be held on Tuesday, March 22, 1994, from 10 a.m. to 12 Noon, in the BLS Postal Square Building (G–440), in Meeting Room #3 (Ground Level), 2 Massachusetts Avenue, NE., Washington, DC (First Street entrance directly across from Union Station).

PUBLIC PARTICIPATION: The meeting will be open to the public. It will be in session from 10 a.m. to 12 Noon. Seating will be available to the public on a first-come, first served basis. Handicapped individuals wishing to attend should contact the office of the Commission to obtain appropriate accommodations. Individuals wishing to submit written statements should send 16 copies to Irasema T. Garza, Executive Director, Commission on Family and Medical Leave, room S–3305, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Irasema Garza, telephone (202) 219–6594.

Signed at Washington, DC this 9th Day of March, 1994.

Irasema T. Garza,

Executive Director, Commission on Family and Medical Leave.

[FR Doc. 94–5886 Filed 3–11–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–29,213]

Smead Manufacturing Co.; Hastings, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 15, 1994, applicable to all workers of the subject firm engaged in employment related to the production of office filing supplies. The certification notice was published in the **Federal**

Register on March 4, 1994 (59 FR 10429).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The findings show that several workers were laid off a few months prior to the Department's impact date of August 1, 1993. The findings also show that the workers were laid off as a result of a company decision to import office filing supplies.

Accordingly, the Department is amending the certification with a new impact date of April 1, 1993.

The amended notice applicable to TA-W-29,213 is hereby issued as follows: All workers of Smead Manufacturing Company, Hastings, Minnesota engaged in employment related to the production of office filing supplies who became totally or partially separated from employment on or after April 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of March 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-5887 Filed 3-11-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 24, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 24, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 28th day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Zurn Industries, Inc (Workers)	Erie, PA	02/28/94	02/18/94	29,541	Steam Generating Equipment.
Prince Gardner, Inc (ACTWU)	Marked Tree, AR	02/28/94	02/17/94	29,542	Women's Billfolds.
Oshkosh B'Gosh, Inc (Workers)	McKenzie, TN	02/28/94	01/31/94	29,543	Children's Pants.
Oshkosh B'Gosh, Inc (Workers)	Oshkosh, WI	02/28/94	02/15/94	29,544	Children's Pants.
Andrea Manufacturing (Workers)	Decatur, IL	02/28/94	02/17/94	29,545	Ladies Sportswear.
Apache International Inc (Workers)	Houston, TX	02/28/94	02/14/94	29,546	Crude Oil and Natural Gas.
Reynolds Aluminum Recycling Co (Workers).	Bristol, CT	02/28/94	02/04/94	29,547	Aluminum Shreds.
Clifton Precision (Workers)	Clifton Heights, PA	02/28/94	02/17/94	29,548	Motors, Resolver, Torque.
Atlantic Design Co (Workers)	Vestal, NY	02/28/94	02/09/94	29,549	Finishing of Circuit Boards.
Ford New Holland (UAW)	Bloomington, MN	02/28/94	02/17/94	29,550	Ford Tractor Parts.
Fisher-Price Inc (Co)	East Aurora, NY	02/28/94	02/08/94	29,551	Company Headquarters.
Gulf Interstate Engineering (Co)	Houston, TX	02/28/94	02/14/94	29,552	Engineering Services & Project Mgr.
Ornstein Fashions, Inc (ILGWU)	Garfield, NJ	02/28/94	02/14/94	29,553	Coats and Suits.
O&K, Inc (IBB)	Batavia, NY	02/28/94	02/04/94	29,554	Front End Loaders.
Polo Clothing Co, Inc (ACTWU)	Lawrence, MA	02/28/94	02/08/94	29,555	Men's Suits.
McDonnell Douglas Helicopter (Co)	Mesa, AZ	02/28/94	02/18/94	29,556	Helicopters.
Genesco, Inc (Co)	Danville, KY	02/28/94	02/16/94	29,557	Men's Footwear.
Genesco, Inc (Co)	Nashville, TN	02/28/94	02/16/94	29,558	Men's Footwear.
Gary Williams Energy Corp (Workers)	Roosevelt, UT	02/28/94	02/10/94	29,559	Propane, Butane, & Natural Gas.

[FR Doc. 94-5888 Filed 3-11-94; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UPLs described below are published in the **Federal Register** in order to inform the public.

Unemployment Insurance Program Letter No. 13-94

This UIPL advises SESAs of the provisions of Public Law (Pub. L.) 103-152 which affect the unemployment compensation (UC) program. Public Law 103-152 requires that States establish and utilize a system of profiling all new claimants for regular UC in order to identify those claimants most likely to exhaust regular UC and in need of reemployment services in order to

obtain new work. It also requires that an individual identified pursuant to the profiling system must participate in reemployment services as a condition of UC eligibility.

Unemployment Insurance Program Letter No. 14–94

This UIPL advises SESAs of the provisions of Public Law 103–182 relating to self-employment assistance as it affects the UC program. Public Law 103–182 amended Federal law to give States the option of permitting, for a five-year period, certain individuals to receive payments from a State's unemployment fund for the purpose of assisting such individuals in establishing businesses and becoming self-employed.

Dated: March 8, 1994.

Doug Ross,

Assistant Secretary of Labor.

Classification: UI.
Correspondence Symbol: TEURL.
Date: January 28, 1994.

Directive: Unemployment Insurance Program Letter No. 13–94

To: All State Employment Security Agencies

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service

Subject: The Unemployment Compensation Amendments of 1993 (Pub. L. 103–152)—Provisions Affecting the Federal-State Unemployment Compensation Program

Rescissions: None.

Expiration Date: January 31, 1995.

1. *Purpose.* To advise State employment security agencies (SESAs) of the provisions of the Unemployment Compensation Amendments of 1993, Public Law (Pub. L.) 103–152, which affect the Federal-State Unemployment Compensation (UC) Program.

2. *References.* Section 4 of Public Law 103–152; Titles III and IX of the Social Security Act (SSA); Public Law 103–6; Public Law 102–318; UI Occasional Papers 89–3 and 91–1; and UIPL 45–93, dated September 23, 1993.

3. *Background.* On November 24, 1993, the President signed into law the Unemployment Compensation Amendments of 1993, Public Law 103–152. Public Law 103–152 extended the Emergency Unemployment Compensation (EUC) program, and amended the SSA to require States, as a condition of receiving administrative grants, to establish and utilize a system of profiling all new claimants for regular UC for purposes of identifying claimants who are likely to exhaust UC and will need job search assistance to make a successful transition to new employment. The SSA was further amended to require States to disqualify an individual identified pursuant this profiling system if the individual fails to participate in reemployment services. In addition, Public Law 103–152 made a technical change to Title IX of the SSA. States have already been advised of those provisions affecting the EUC program in GAL 12–92, Change 6. This issuance is limited to those amendments to the SSA affecting the Federal-State UC program. These amendments are as follows:

(a) a new requirement that States establish and utilize a system of profiling all new claimants for regular UC;

(b) a new requirement that State law require claimants identified as most likely to exhaust regular UC to participate in reemployment services as condition of UC eligibility; and

(c) a technical amendment to Title IX of the SSA pertaining to the Unemployment Trust Fund.

4. *Action Required.* SESAs are requested to take the action necessary to assure consistency with Federal requirements as amended by Public Law 103–152. The effective dates for implementation of these amendments are found in Attachment III.

5. *Inquiries.* Inquiries should be directed to your Regional Office.

6. *Attachments.*

I. Unemployed Workers Profiling
II. Participation in Reemployment Services
III. Draft Language to Implement Section 4(b) of Public Law 103–152
IV. Technical Amendment Concerning the Unemployment Trust Fund

Attachment I to UIPL 13–94

Unemployed Worker Profiling

a. *Text of Amendment—Section 4(a) of Public Law 103–152*

Sec. 4. Worker Profiling.

(a) In General.—

(1) Establishment of Profiling System.—Section 303 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j)(1) The State agency charged with the administration of the State law shall establish and utilize a system of profiling all new claimants for regular compensation that—

"(A) Identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

"(B) Refers claimants identified pursuant to subparagraph (A) to reemployment services, such as job search assistance services, available under any State or Federal law;

"(C) Collects follow-up information relating to the services received by such claimants and the employment outcomes for such claimants subsequent to receiving such services and utilizes such information in making identifications pursuant to subparagraph (A); and

"(D) Meets such other requirements as the Secretary of Labor determines are appropriate.

"(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State."

b. *Discussion.*

Profiling—Situation Prior to Enactment of Public Law 103–152. Profling is based on the premise that a set of characteristics—a "profile"—can be developed to identify, at an early stage of unemployment, which workers are likely to exhaust UC and will need assistance to find new jobs. Research on this point sponsored by the Department of Labor and conducted in the State of New Jersey found that profiled claimants who received reemployment services returned to work earlier than those who did not receive such services. (See UI Occasional Papers 89–3 and 91–1 which contain reports on the New Jersey project). In addition, studies on the long-term unemployed have found that individual characteristics such as schooling and job tenure relate to when the individuals return to work. Thus, providing early reemployment assistance to individuals most likely to remain out of work should result in an earlier return to work.

Section 4 of Public Law 103–6 addressed the establishment of a system of profiling all new claimants for regular UC (including new claimants under Federal unemployment benefit allowance programs) to determine which claimants may be most likely to exhaust regular UC and may need reemployment services to make a successful transition to new employment. Although States were not required to establish a system of profiling, the Secretary was directed to "encourag[e] [its] adoption and implementation by all States," as well as provide "technical assistance and advice to the States in the development of model profiling systems."

In response to this legislation, the Department took action to develop a model profiling system. UIPL 45–93 was issued and States were encouraged to provide comments on the profiling system and the procedures needed to implement it. The Department was in the process of developing this system and a strategy for its implementation when Public Law 103–152 was enacted.

Profiling—Effect of Public Law 103–152. The amendments made by Public Law 103–152 repealed section 4 of Public Law 103–6 and added subsection (j) to section 303, SSA, to require States, as a condition for receiving Title III grants, to implement and utilize a system of profiling all new claimants for regular UC. Under section 303(j)(1), SSA, the system must include components which:

1. Identify which claimants will be likely to exhaust regular UC and will need job search assistance services to make a successful transition to new employment.

2. Refer the claimants described in item 1 above to reemployment services, such as job search assistance services, available under any State or Federal law. The conference Committee Report defines "reemployment services" as:

* * * job search assistance and job placement services, such as counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs and referrals to employers, and other similar services. [H. Rep. No. 333, 103rd Cong. 1st Sess., 5 (1993)]

3. Collect follow-up information relating to the services received by such claimants and their employment outcomes and use the information for future profiling.

4. Meet "such other requirements as the Secretary of Labor determines are appropriate."

The Department of Labor will provide further guidance concerning "reemployment services," job search assistance," "follow-up information," "employment outcomes" and any other requirements the Secretary of Labor determines to be necessary for the proper implementation of a profiling system.

c. *Technical Assistance and Report.* Section 4(c) of Public Law 103–152 requires that the "Secretary of Labor shall provide technical assistance and advice to assist the States in implementing the profiling system" and that "such assistance shall include the development and identification of model profiling systems." The Department of Labor plans to provide technical assistance to States. Information concerning this assistance and the model profiling systems will be provided in future issuances.

Section 4(d) of Public Law 103–152 requires that, not later than the date three years after the date of enactment of Public Law 103–152, the Secretary of Labor will report to the Congress on the operation and effectiveness of the profiling system and of the participation requirement described in Attachment II below. Since Public Law 103–152 was enacted on November 24, 1993, the report is due November 24, 1996.

d. *Effective Date.* Section 303(j)(2), SSA, requires that States must comply substantially with the requirements of 303(j)(1), SSA as a condition of receiving administrative grants under Section 303(a), SSA.

Under section 4(f)(1) of Public Law 103–152, new section 303(j), SSA, "shall take effect on the date one year after the date of the enactment of this Act," or November 24, 1994. In determining whether to take action against a State which has not appropriately amended its law and/or not established a profiling system by this effective date, the Department of Labor will take into consideration the feasibility of such State taking that action to meet the requirements of the statute, as interpreted by the Department in its operating instructions. These operating instructions will be provided in future issuances.

Attachment II to UIPL 13–94

Participation in Reemployment Services

a. *Text of the Amendment—Section 4(b) of Public Law 103–152.*

(b) Participation Requirement.—Section 303(a) of the Social Security Act is amended—

(1) By striking the period at the end of paragraph (9) and inserting "; and ", and

(2) By adding at the end thereof the following new paragraph:

"(10) A requirement that, as a condition of eligibility for regular compensation for any week, any claimant who has been referred to reemployment services pursuant to the profiling system under subsection (j)(1)(B) participate in such services or in similar services unless the State agency charged with the administration of the State law determines—

"(A) Such claimant has completed such services; or

"(B) There is justifiable cause for such claimant's failure to participate in such services."

b. *Discussion.* Public Law 103–152 added section 303(a)(10) to the SSA to require States, as a condition of receiving Title III grants, to place an additional condition of eligibility on claimants who have been referred to reemployment services pursuant to the profiling system under subsection 303(j)(1)(B), SSA. A profiled claimant, in order to be eligible for regular UC for any given week, must participate in reemployment services or similar services unless the State agency determines that (1) the profiled claimant has already completed such services; or (2) there is a justifiable cause for the claimant's failure to participate in such services. The Department of Labor will provide further guidance to States concerning participation in "reemployment services" or "similar services" and "justifiable cause."

The Department believes States will need to amend their laws to provide for a disqualification based on a profiled claimant's failure to participate in reemployment services. If a State does not need to make such a law change, it will be necessary to notify the Department that such a disqualification can be accomplished without amendment.

c. *Effective Date.* Section 4(f) of Public Law 103–152, requires that new Section 303(a)(10), SSA, "shall take effect on the date one year after the date of the enactment of this Act," or November 24, 1994. In determining whether to take action against a State which has not met this requirement by this effective date, the Department of Labor will take into consideration the feasibility of such State timely amending its law and establishing a profiling system (which is a necessary requisite to this denial provision) which meets the requirements established by the Department in its operating instructions.

Attachment III to UIPL 13–94

Draft Language to Implement Section 4(b) of Public Law 103–152

States needing to amend their laws to incorporate the new eligibility criteria established by Public Law 103–152, may wish to use the following draft language.

(a) *Eligibility for benefits.*—An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

* * * * *

( ) participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the Commissioner.

Attachment IV to UIPL 13–94

Technical Amendment Concerning the Unemployment Trust Fund

(a) *Text of the Amendment—Section 5 of Public Law 103–152.*

Sec. 5. Technical Amendment to Unemployment Trust Fund.

Paragraph (1) of section 905(b) of the Social Security Act is amended to read as follows:

"(b)(1) Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month) from the employment security administration account to the extended unemployment compensation account established by subsection (a), an amount (determined by such Secretary) equal to 20 percent of the amount by which—

"(A) The transfers to the employment security administration account pursuant to section 901(b)(2) during such month, exceed

"(B) The payments during such month from the employment security administration account pursuant to section 901(b)(3) and (d).

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred."

(b) *Discussion.* The legislation proposed which eventually became Public Law 103–318 contained a provision which would have amended section 901(b)(1), SSA, to create new subparagraphs (A) and (B). This provision was not enacted. However, corresponding amendments to section 905(b) were included in the enacted version of Public Law 103–319. As these amendments referred to non-existent sections, the amendments had no effect. Section 5 of Public Law 103–152 amended Section 905(b), SSA, to delete the erroneously enacted language pertaining to the non-existing section.

Classification: UI.
Correspondence Symbol: TEURL.
Date: February 16, 1994.
Directive: Unemployment Insurance Program Letter No. 14–94
To: All State Employment Security Agencies
From: Mary Ann Wyrsch, Director, Unemployment Insurance Service
Subject: North American Free Trade Agreement Implementation Act (Pub. L. 103–182)—Provisions Affecting the Federal-State Unemployment Compensation (UC) Program relating to Self-Employment Assistance
Rescissions: None.
Expiration Date: February 28, 1995.

1. *Purpose.* To advise State agencies of the provisions of the North American Free Trade Agreement Implementation Act which affect the Federal-State UC Program.

2. *References.* The Federal Unemployment Tax Act (FUTA); Title III of the Social Security Act (SSA); the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), as amended; section 9152 of Public Law 100–203; section 507 of the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103–182; Unemployment Insurance Program Letter (UIPL) 29–83, Change 1: General Administration Letter (GAL) 7–94; and UI Occasional Paper 92–2.

3. *Background.* On December 8, 1993, the President signed into law the NAFTA, Public Law 100–182, which affects the UC program in two ways. First, NAFTA created a transitional adjustment assistance program

designed to address worker dislocation caused by NAFTA. This aspect of NAFTA was addressed in GAL 7–94. Second, NAFTA amended Federal law to give States the option of permitting, for a five-year period, certain individuals to receive a payment from the State's unemployment fund for the purpose of assisting such individuals in establishing a business and becoming self-employed. It is this second aspect of NAFTA which is the subject of this UIPL.

4. *Discussion.*

a. *In General.* The "withdrawal standard" of Section 3304(a)(4), FUTA, and section 303(a)(5), SSA, limits withdrawals (with specified exceptions not relevant here) from a State's unemployment fund to payments of "compensation" and prior to the enactment of NAFTA would have prohibited withdrawals for the purpose of paying self-employment allowances. The term "compensation" is defined in section 3306(h), FUTA, as "cash benefits payable to individuals with respect to their unemployment." Due to this requirement that the payment be with respect to "unemployment," the withdrawal standard has previously, with one temporary exception, prohibited States from using unemployment funds to assist individuals in establishing themselves in self-employment.

The previous temporary exception was created by section 9152 of Public Law 100–203, the Budget Reconciliation Act of 1987. Public Law 100–203 authorized three demonstration projects to test the feasibility of providing self-employment allowances, payable from a State's unemployment fund, to individuals. Only Massachusetts operated a demonstration project. The initial report on this project was issued in UI Occasional Paper 92–2, Self-Employment Programs for Unemployed Workers, and is available by writing Ingrid Evans, United States Department of Labor, Unemployment Insurance Service, 200 Constitution Ave. NW., room S–4231, Washington, DC 20210. A final report will be available in 1994.

NAFTA amended Federal law to allow payments to self-employed individuals under specified conditions during the five years following NAFTA's date of enactment. The report of the House Ways and Means Committee describes the intent behind the new Self-employment provision:

Providing States the authority to establish and operate self-employment programs would significantly benefit workers that may be dislocated because of the NAFTA. The traditional system of unemployment compensation is primarily designed to provide income support for workers who are temporarily laid off or expect to be unemployed for only a short time. However, as a result of the NAFTA, some workers may lose their jobs permanently and need additional tools besides the basic income maintenance provided by the unemployment insurance system in order to re-enter the work force. For some of those workers, access to a self-employment program would be the best path for them to re-enter the work force. This provision gives states the ability to add the tool of self-employment training and support to the options available to help speed the transition of dislocated workers back into the work force. [H. Rept. No. 361, Part 1, 103rd Cong., 1st Sess. 94 (1993).]

Specifically, section 507, NAFTA, amended the withdrawal standard (and the definition of "unemployment fund" in section 3306(f), FUTA) to provide that amounts may be withdrawn from the unemployment fund of a State "for the payment of allowances under a self-employment assistance program (as defined in section 3306(t)) * * *" FUTA. This exception to the withdrawal standard applies solely to the self-employment assistance (SEA) allowances described in section 3306(t), FUTA, which was also added to FUTA by section 507(a), NAFTA. Under new section 3306(t)(1), SEA allowances are payable "in lieu of regular" UC for the purposes of assisting individuals in establishing a business and becoming self-employed.

b. *Eligibility for SEA Allowances.* SEA allowances are to be payable "in the same amount, at the same interval [e.g., payment with respect to a period will be made weekly if that is the State's usual practice for claims for regular UC or every other week if that is the usual practice], on the same terms, and subject to the same conditions as" regular UC. (Section 3306(t)(2), FUTA.) This "equal treatment" provision applies to all monetary and nonmonetary (including reporting and certification) eligibility requirements except where specifically prohibited by other provisions of Federal law pertaining to SEA allowances. It also applies to notice and appeal rights.

Since individuals engaged in self-employment activities will normally be disqualified if certain eligibility provisions for State UC are followed, section 3306(t)(2), FUTA, provides that these provisions of State law shall not be followed. Specifically, the following provisions shall not apply:

(1) State requirements relating to availability for work, active search for work, and refusal to accept work.

(2) State requirements relating to disqualifying income are not applicable to income earned from self-employment by individuals claiming SEA allowances.

In addition, individuals in the SEA program will be considered to be "unemployed" for purposes of both Federal and State UC laws provided the individuals meet provisions of State law subject to the above equal treatment provision and four additional eligibility provisions for SEA allowances discussed immediately below. (The effect of this requirement on Federal law is discussed below in item 4.f.)

Section 3306(t)(3), FUTA, contains the four additional eligibility provisions which individuals must meet to receive SEA allowances:

(1) They must be eligible to receive regular UC under the State law (or they would be eligible but for the requirements suspended by the SEA provisions at section 3306(t)(2), FUTA, as discussed above). This is basically a restatement of the "equal treatment" requirement of section 3306(t)(1), FUTA, and includes monetary as well as initial and continuing nonmonetary eligibility. For purposes of determining SEA eligibility, "regular compensation" includes UC for ex-servicemembers (UCX) and former Federal employees (UCFE). (See item 4.g below.)

Since the SEA allowance is "in lieu of" regular UC, the total amount of SEA allowances that individuals may receive is equal to their maximum benefit amount of regular UC less any regular UC previously received. Similarly, the weekly SEA allowance amount must equal the weekly benefit amount for regular UC. Also, SEA allowances and regular UC may not be paid for the same period.

The term "regular compensation" is defined in section 205(2), EUCA, as "compensation payable to an individual under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation." Thus, individuals who have exhausted regular UC are ineligible for SEA allowances. Individuals may not receive SEA allowances in lieu of Federal-State extended benefits (EB), additional benefits (AB) entirely financed by the State, any wholly funded Federal extension of UC, or other types of compensation not meeting the definition of regular UC.

Individuals who are terminated from or voluntarily leave the SEA program may collect regular UC with respect to the benefit year (if otherwise eligible) until the total amount of regular UC paid and SEA paid equals the maximum benefit amount. Such individuals may be paid EB if otherwise eligible. This is because, under 20 CFR 615.5(a)(1), these individuals are "exhaustees" for EB purposes because they have received "all of the regular compensation that was payable under the applicable State law * * *." Similarly, individuals who exhaust the maximum benefit amount as SEA program participants may also receive EB if otherwise eligible. Whether any of the individuals discussed in this paragraph are eligible for other Federal extensions will depend on the law creating the extension. Whether individuals are eligible for AB will be determined by State law.

(2) The individuals must be identified pursuant to a State worker profiling system as likely to exhaust regular UC. For further discussion of SEA profiling requirements, refer to items 4.d and 4.j of this UIPL.

(3) The individuals are participating in self-employment assistance activities which are approved by the State agency. State agency is defined in Section 3306(e), FUTA, as the authority "designated under a State law to administer the unemployment fund in such State." The activities which must be offered the individuals are entrepreneurial training, business counseling, and technical assistance. (Information concerning these activities may be found in UI Occasional Paper 92–2, which describes services provided to claimants participating in the self-employment demonstration programs in Washington and Massachusetts.) If these activities are not available, an individual pursuing self-employment will not be eligible for SEA allowances; determination of eligibility for regular UC for such individuals will be made under State law provisions relating to self-employment. The activities

may be offered by either private or public entities.

An individual who fails to participate in a scheduled activity (e.g., failure to attend a scheduled training course) is not considered to be participating in SEA program activities. However, for purposes of receiving a SEA allowance, it is not always necessary for the individual to have actually participated in SEA program activities for the week claimed. What is, at a minimum, necessary is that the individual be participating in a program (approved by the State agency) which provides training programs on an ongoing basis and allows individuals to avail themselves of other SEA program services when they are needed. As long as individuals are under such a program, even though no activities are scheduled for a given week, they will be considered to be participating in SEA program activities and may be paid SEA allowances. It is possible that an individual may be eligible for both regular UC and the SEA allowance. This will occur when the individual is participating in training related to self-employment which is also approved training under State law. In this instance, the State is free to determine whether regular UC or the SEA allowance will be paid as long the eligibility requirements for the respective program are met. However, in no instance may both regular UC and the SEA allowances be paid with respect to the same period.

Since States do not disqualify individuals under their regular UC laws for failure to participate in SEA program activities, the SEA "equal treatment" provision does not address what disqualifications States may impose in these cases. It is recommended that States disqualify these individuals from receipt of SEA allowances only for the week the failure to participate occurs. Such individuals may be eligible for regular UC for that week if State law provisions relating to regular UC are met. Individuals who fail to meet the participation requirement may be dropped by the State from the SEA program.

(4) They are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed. The Department of Labor ("Department") is researching the relationship of this requirement to the Americans with Disabilities Act. When this research is completed, guidance on what constitutes a "full-time basis" will be provided.

As is the case with failing to participate in SEA activities, States do not currently disqualify individuals under their regular UC laws for failure to actively engage on a full-time basis relating to the establishment of a business and becoming self-employed. Therefore, the SEA "equal treatment" provision does not address what disqualifications States may impose in these cases. It is recommended that States disqualify these individuals from receipt of SEA allowances only for the week the failure to actively engage on a full-time basis occurs. Such individuals may be eligible for regular UC for that week if State law provisions relating to regular UC are met. Individuals who fail to meet the "full-time" requirement may be dropped by the State from the SEA program.

c. *5 Percent Rule.* Section 3306(t)(4), FUTA, places a limitation on the number of individuals in a State who may receive SEA allowances. Specifically, it provides that the aggregate number of individuals receiving the allowance must "not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the State law at such time * * *." The Department will monitor this "5 percent test" on a monthly basis. Therefore, States must use at least a monthly measurement period as well. The calculation relates to individuals actually receiving (i.e., paid) SEA for the week as a percent of those receiving regular UC for the same week. Thus, for example, if 10,000 individuals receive regular UC (including UCFE and UCX) for a given week, then no more than 500 may receive SEA allowances (including UCFE and UCX claimants).

Note: The 5 percent figure is not arrived at by taking 5 percent of the sum of the number of individuals receiving SEA and the number of individuals receiving regular UC.

The 5 percent figure is an express limitation which the State may not exceed. Therefore, States must monitor SEA allowance payments closely to assure that the 5 percent limitation is not exceeded. The Department recommends that new individuals not be added to the SEA program if it appears the 5 percent threshold may be exceeded.

d. *No Cost to Unemployment Trust Fund (UTF).* Section 3306(t)(5), FUTA, places an additional requirement on the States as a condition of paying SEA allowances. It provides that the payment of SEA allowances must not result in any cost to the UTF "in excess of the cost that would be incurred by such State and charged to such [Unemployment Trust] Fund if the State had not participated in" the SEA program. Put simply, payment of SEA allowances may not result in any additional benefit charges to the UTF. This limitation applies only to the benefit costs associated with the payment of SEA/regular UC. It does not apply to the charging of SEA allowances to employers.

Since individuals successfully establishing themselves in self-employment will not collect EB, the UTF will accrue some savings to the Extended Unemployment Compensation Account and the State's account. However, since EB is not always payable in a State, the Department has determined that this "no cost" requirement will be met only if:

(1) The State implements a profiling system which assures that only claimants likely to exhaust regular UC will receive SEA allowances. An inadequate profiling system were those likely to not exhaust regular UC are allowed to receive SEA allowances will not meet the "no cost" requirement.

(2) The State creates "participation requirements" designed to assure SEA allowances are paid only to those who actually participate in the SEA program. Participation requirements for determining if an individual is actively engaged on a full-time basis in SEA activities must be at least as stringent as the able and available requirements for regular UC; otherwise the SEA program will not meet the "no cost" requirement.

More information on what is required of States in these areas is described in item 4.j below.

e. *State Reports.* Section 507(c), NAFTA, provides that any State operating a SEA program authorized by the Secretary of Labor must report annually to the Secretary the number of individuals who participate in the SEA program, the number of individuals who are able to develop and sustain businesses (e.g., business survival data), the cost of operating the SEA program, and compliance with program requirements. The report must also contain other relevant data needed by the Department, including data related to business income, number of employees and wages paid in the new businesses, and incidence and duration of unemployment after business start-up.

State reports will be submitted with respect to a calendar year and will be due the June 30 following the report year. This means the first report may be for only part of a year. For example, if a State's SEA program is effective April 1, 1994, then the first annual report will be due on June 30, 1995 and will cover a nine-month period.

Failure to submit the report as required will create an issue under section 303(a)(6), SSA, which requires that, as a condition of receipt of administrative grants for the UC program, State law provides for "the making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require * * *."

Under section 507(d), NAFTA, the Secretary of Labor is required to submit a report to Congress with respect to the SEA program not later than four years after the date of enactment of NAFTA. Since NAFTA was enacted on December 8, 1993, this report is due no later than December 8, 1997. This report will be based on the reports from the States operating SEA programs.

f. *Individuals Receiving SEA considered to be Unemployed.* As noted in item 4.a, section 3306(h) defines "compensation" as "cash benefits payable to individuals with respect to their unemployment." Payments to self-employed individuals are not compensation since they are not payable with respect to unemployment. However, under section 3306(t)(2)(c), FUTA, individuals to whom the SEA allowances are payable "are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation, as long as such individuals meet the requirements" of section 3306(t). The effect of this provision is that, with respect to SEA, individuals are considered to be unemployed and payments made to them are considered to be "compensation." Thus, the term "compensation" is considered to include individuals eligible for SEA allowances. The term "regular compensation" does not, however, include SEA allowances. This is because under Section 3306(t)(1), FUTA, SEA is payable "in lieu of" regular UC.

g. *Equal Treatment Requirements Elsewhere in Federal Law.* In addition to the SEA "equal treatment" requirement in Section 3306(t)(2), FUTA, Federal law contains two other equal treatment requirements mandating payment of compensation "in the same amount, on the

same terms, and subject to the same conditions" as UC payable under State law. One requirement is found in section 3304(a)(6)(A), FUTA, and pertains to payment of UC based on services performed for State and local governments and certain nonprofit entities, commonly called "reimbursing" employers. The other requirement is found in 5 U.S.C. 8502(b) and pertains to payment of UCX and UCFE. As noted in item 1.f, above, the term "compensation" is considered to include SEA allowances. Therefore, individuals who perform services covered under these two additional "equal treatment" provisions must be given the option of receiving SEA allowances. The payment of SEA allowances does not require an amendment to the UCFE/UCX agreement.

The "equal treatment" requirement contained in section 3306(t)(2), FUTA, provides that SEA allowances will be "payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment compensation under the State law * * *." Thus, SEA allowances must be paid to all eligible individuals to whom regular UC is payable under State law, including individuals who performed services to which section 3304(a)(6)(A), FUTA, and 5 U.S.C. chapter 85 apply.

These equal treatment requirements extend to all aspects related to the payment of SEA.

h. *Financing of SEA Allowances.* It will be necessary for States to review their laws to determine how the allowances will be financed. Financing depends on the type of employer for which the individual receiving the allowance previously performed services.

(1) *Experience Rated Employers.* Section 3303(a)(1), FUTA, requires, as a condition of employers in a State obtaining the additional credit against the Federal unemployment tax, that no reduced contribution rate be assigned an employer, except on the basis of "experience with respect to unemployment or other factors bearing a direct relation to unemployment risk * * *." All but one of the existing experience rating systems consist of charging payments of compensation or benefit wages to an employer who had previously provided employment to the compensated individual.

As noted in item 1.f, under section 3306(t)(2)(c), FUTA, individuals to whom the SEA allowance is payable "are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation * * *." Under this provision, SEA allowances reflect "experience with respect to unemployment or other factors bearing a direct relation to unemployment risk" for purposes of section 3303(a)(1), FUTA. Therefore, the measurement of an employer's experience through charges based on SEA allowances is appropriate.

In charging SEA allowances, States must use the same method of charging (e.g., charging base period employers proportionately) and noncharge in the same situations (e.g., noncharging claims where the individual has voluntarily quit) as apply to regular UC. To fail to do this would raise an issue under the "uniform method" requirement of section 3303(a)(1), FUTA. See UIPL 29–83, Change 1, dated September 24, 1991.

The Department will address the issue of whether SEA allowances may be noncharged when it develops a comprehensive noncharging policy.

(The one experience rating system not using payments of compensation or benefit wages is Alaska which uses a payroll decline system. The Department believes this system will not be affected by the payment of SEA allowances.)

(2) *Reimbursing Employers.* Section 3309(a)(2), FUTA, provides that costs "of compensation attributable under the State law" to service performed for State and local governments and nonprofit organizations to which that section pertains must be reimbursed by such entities. Since, as discussed in item 1.f, SEA allowances are considered to be compensation, this requirement also applies to SEA allowances.

(3) *Federal Military and Civilian Employers.* Under 5 U.S.C. 8509(b), moneys in the Federal Employees Compensation Account shall be "available only for the purpose of making payments to States pursuant to agreements" with the Secretary of Labor. Since payments of SEA are payments of compensation for purposes of Federal law, SEA allowances attributable to Federal military or civilian service may be charged to Federal employers.

i. *Payment of Administrative Costs.* Costs of administering SEA allowances (including those paid to UCFE and UCX claimants) are payable from grants received for the administration of State's UC law under Title III of the SSA. Costs of providing SEA program services such as entrepreneurial training, business counseling and technical assistance are not, however, payable from these Title III funds.

j. *Required Plan.* Section 3306(t)(6), FUTA, provides that a State SEA program must meet "such other requirements as the Secretary of Labor determines to be appropriate." Secretary's Order No. 4–75 (40 FR 18515) gives the Department the authority to make this determination. The Department has determined that, prior to implementing a SEA program, the Department must approve a State plan. This approval process will assure an orderly start-up of the SEA program in a State. To be approved the plan must contain:

(1) A description of the profiling system used to identify SEA program participants. The State has three options for choosing a profiling system:

(A) Using elements of the statistical model developed by the Department for purposes of providing technical assistance in implementing Section 303(j), SSA. (Section 303(j), SSA, requires States to establish and use a system of profiling all new claimants for regular UC.) The report on the profiling model, Profiling Dislocated Workers for Early Referral to Reemployment Services by Kelleen Worden (October 6, 1993), is available from the appropriate Regional Office. If this model is used, States must re-estimate the coefficients using State data.

(B) A statistical model developed by the State.

(C) Another profiling method developed by the State.

Regardless of which option is chosen, the State must demonstrate that its system has a high degree of accuracy for purposes of meeting the cost-neutrality requirement discussed in item 4.d. For this reason, the State must submit with its plan a baseline analysis of historical data indicating the extent to which the exhaustion rate of individuals identified by the proposed system exceeds the exhaustion rate of the population of all beneficiaries under the regular UC program. The determination of whether the system is sufficiently accurate will be made by the Department.

(2) Assurances that the annual report will be submitted as required and contain such information as required by this UIPL.

(3) A description of participation requirements including:

(A) The structured set of services provided to individuals in the SEA program. The description must address the working relationship of the State agency with any entity (such as a State economic development agency or an agency administering the Job Training Partnership Act) providing services under the SEA program.

(B) A description of what actions (such as certification procedures) the States will take to assure SEA participants are engaged "on a full-time basis" in self-employment activities.

(4) Legislative language implementing the SEA program consistent with the requirements of this UIPL. (Draft language is provided in Attachment II and a Commentary in Attachment III.)

(5) A description of the source (and amount of) funds for paying for SEA program activities such as entrepreneurial training, business counseling, and technical assistance, and assurances that Title III, SSA, funds will not be used for these activities.

(6) Assurances that the payment of SEA allowances will not create any additional benefit costs to the UTF.

Since no State may commence operation of a SEA program without approval of a plan by the Department, States may expedite implementation of the SEA program by submitting their plans prior to obtaining legislation. Although the Department may provide provisional approval of a plan prior to enactment, it will not approve any plan until certified copies of SEA legislation are provided by the State. Any modifications to an approved plan are to be submitted to the Department.

Proposed plans and modifications to approved plans are to be submitted to the appropriate Regional Office.

k. *Counting of SEA Claims for EB Trigger Purposes.* SEA claimants are to be included in the calculation of the insured unemployment rate (IUR) for purposes of determining whether EB is payable in a State.

l. *Reporting Requirements.* Any changes required in reporting to the Department will be addressed in future issuances.

m. *Effective Date and Termination Date of SEA Programs.* Under Section 507(e), NAFTA, the provisions of Federal law relating to SEA programs are effective on the date of enactment of NAFTA. In addition, these provisions provide only temporary exceptions to the withdrawal standard. The

authority to operate SEA programs expires five years after the date of enactment of NAFTA. Since NAFTA was enacted on December 8, 1993, the SEA program provisions were effective on that date and expire on December 8, 1998.

5. *Action Required.* The establishment of SEA programs is optional for States. However, States must enact enabling legislation and obtain this Department's approval of a plan prior to implementing a SEA program.

6. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

7. *Attachments.*

I. Text of Section 507, NAFTA.

II. Draft Language to Implement a Self-Employment Assistance Program.

III. Commentary on the Draft Language to Implement a Self-Employment Assistance Program.

Attachment I to UIPL 94–

Text of Section 507, NAFTA

Sec 507. Treatment of Self-Employment Assistance Programs

(a) General Rule.—Section 3306 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(t) Self-Employment Assistance Program.—For the purposes of this chapter, the term 'self-employment assistance program' means a program under which—

"(1) Individuals who meet the requirements described in paragraph (3) are eligible to receive an allowance in lieu of regular unemployment compensation under the State law for the purpose of assisting such individuals in establishing a business and becoming self-employed;

"(2) The allowance payable to individuals pursuant to paragraph (1) is payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment compensation under the State law, except that—

"(A) State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable to such individuals;

"(B) State requirements relating to disqualifying income are not applicable to income earned from self-employment by such individuals; and

"(C) Such individuals are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation, as long as such individuals meet the requirements applicable under this subsection;

"(3) Individuals may receive the allowance described in paragraph (1) if such individuals—

"(A) Are eligible to receive regular unemployment compensation under the State law, or would be eligible to receive such compensation except for the requirements described in subparagraph (A) or (B) of paragraph (2);

"(B) are identified pursuant to a State worker profiling system as individuals likely to exhaust regular unemployment compensation; and

"(C) are participating in self-employment assistance activities which—

"(i) include entrepreneurial training, business counseling, and technical assistance; and

"(ii) are approved by the State agency; and

"(D) are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed;

"(4) the aggregate number of individuals receiving the allowance under the program does not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the State law at such time;

"(5) the program does not result in any cost to the Unemployment Trust Fund (established by section 904(a) of the Social Security Act) in excess of the cost that would be incurred by such State and charged to such Fund if the State had not participated in such program; and

"(6) the program meets such other requirements as the Secretary of Labor determines to be appropriate.".

(b) Conforming Amendments.—

(1) Section 3304(a)(4) of such Code is amended—

(A) In subparagraph (D), by striking "; and" and inserting a semicolon;

(B) In subparagraph (E), by striking the semicolon and inserting "; and"; and

(C) By adding at the end the following new subparagraph:

"(F) Amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t));"

(2) Section 3306(f) of such Code is amended—

(A) In paragraph (3), by striking "; and" and inserting a semicolon;

(B) In paragraph (4), by striking the period and inserting "; and"; and

(C) By adding at the end the following new paragraph:

"(5) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).".

(3) Section 303(a)(5) of the Social Security Act (42 U.S.C. 503(a)(5)) is amended by striking "; and" and inserting ": Provided further, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986); and".

(c) State Reports.—Any State operating a self-employment program authorized by the Secretary of Labor under this section shall report annually to the Secretary on the number of individuals who participate in the self-employment assistance program, the number of individuals who are able to develop and sustain businesses, the operating costs of the program, compliance with program requirements, and any other relevant aspects of program operations requested by the Secretary.

(d) Report to Congress.—Not later than 4 years after the date of enactment of this Act, the Secretary of Labor shall submit a report to the Congress with respect to the operation of the program authorized under this section. Such report shall be based on the reports received from the States pursuant to subsection (c) and include such other information as the Secretary of Labor determines is appropriate.

(e) Effective Date; Sunset.—

(1) Effective Date.—The provisions of this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Sunset.—The authority provided by this section, and the amendments made by this section, shall terminate 5 years after the date of the enactment of this Act.

Attachment II to UIPL 94—

Draft Language to Implement a Self-Employment Assistance Program

States wishing to amend their UC law to add the optional SEA program provisions may use the following draft language. A Commentary is provided in Attachment III.

Section _____. Self-Employment Assistance Program

(a) *Definitions.* As used in this section—

(1) "Self-employment assistance activities" means activities (including entrepreneurial training, business counseling, and technical assistance) approved by the commissioner in which an individual identified through a worker profiling system as likely to exhaust regular benefits participates for the purpose of establishing a business and becoming self-employed.

(2) "Self-employment assistance allowance" means an allowance, payable in lieu of regular benefits and from the unemployment fund established under section _____ [enter relevant section], to an individual participating in self-employment assistance activities who meets the requirements of this section.

(3) "Regular benefits" means benefits payable to an individual under this Act (including benefits payable to Federal civilian employees and to ex-servicemembers pursuant to 5 U.S.C. chapter 85) other than additional and extended benefits.

(4) "Full-time basis" shall have the meaning contained in regulations prescribed by the commissioner.

(b) *Amount of self-employment assistance allowance.* The weekly allowance payable under this section to an individual will be equal to the weekly benefit amount for regular benefits otherwise payable under section _____ of this Act. The sum of (1) the allowances paid under this section and (2) regular benefits paid under this Act with respect to any benefit year shall not exceed the maximum benefit amount as established by section _____ with respect to such benefit year.

(c) *Eligibility for self-employment assistance allowance.* The allowance described in subsection (a) shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this Act, except that—

(1) The requirements of sections _____ [enter relevant sections] relating to availability for work, active search for work, and refusal to accept work are not applicable to such individual;

(2) The requirements of section _____ [enter relevant section] relating to self-employment income are not applicable to income earned from self-employment by such individual;

(3) An individual who meets the requirements of this section shall be considered to be unemployed under section _____ [enter relevant section]; and

(4) An individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed shall be disqualified for the week such failure occurs.

(d) *Limitation on receipt of self-employment assistance allowances.* The aggregate number of individuals receiving the allowance under this section at any time shall not exceed 5 percent of the number of individuals receiving regular benefits. The commissioner shall, through regulations, prescribe such actions as are necessary to assure the requirements of this subsection are met.

(e) *Financing costs of self-employment assistance allowances.* Allowances paid under this section shall be charged to employers as provided under provisions of this Act relating to the charging of regular benefits.

(f) *Effective date and termination date.* The provisions of this section will apply to weeks beginning after the date of enactment or weeks beginning after any plan required by the United States Department of Labor is approved by such Department, whichever date is later. The authority provided by this section shall terminate as of the end of the week preceding the date when Federal law no longer authorizes the provisions of this section, unless such date is a Saturday in which case the authority shall terminate as of such date.

Attachment III to UIPL 94–

Commentary on the Draft Language to Implement a Self-Employment Assistance Program

This commentary should be used in conjunction with Section 4 of this UIPL.

States will need to make adjustments in the draft language to accommodate State law conventions. Blanks have been provided for inserting cites to relevant sections of the State law.

(a) *Definitions.*

(1) *Self-employment assistance activities.* These activities are defined consistent with section 3306(t)(3)(C) and (D), FUTA. States should note that the approval of the State agency is limited to the self-employment "activities" themselves. States may not base a denial of approval on factors unrelated to the self-employment assistance activities.

(2) *Self-employment assistance allowance.* This section defines the SEA allowance and establishes that such allowances are to be paid from the State's unemployment fund. States may also wish to consider whether to amend the section of State law which governs withdrawals from the unemployment fund.

(3) *Regular Benefits.* A definition of "regular benefits" (or "regular compensation") is necessary since SEA allowances are payable "in lieu of" regular compensation. State law may already contain a definition of regular benefits in which case the addition of this definition may not be necessary. Some State laws contain a definition of regular benefits in the sections pertaining to EB. In these cases, the State will need to determine whether the definition is limited to the EB section, and, therefore, whether a cross-reference is necessary.

(4) *Full-time basis.* Since the Department is not at this time providing a specific definition of "full-time basis," it is recommended that States reserve the right to prescribe the definition in regulations in order to assure consistency with Federal law.

(b) *Amount of self-employment assistance allowance.* This section governs the weekly and maximum amount of SEA allowance payable. It assures that SEA allowances are paid "in the same amount" as regular UC. It also clarifies the relationship between payments of regular UC and SEA allowances with respect to a benefit year.

(c) *Eligibility for self-employment assistance allowance.* This section contains the "equal treatment" requirement of Section 3306(t)(2), FUTA (except for the requirement that SEA allowances be paid "in the same amount" which is contained in subsection (b) above). It also contains the three exceptions to the "equal treatment" requirement which are found in subparagraphs (A) through (C) of section 3306(t)(2), FUTA.

By cross referencing the definition of "self-employment assistance activities," this provision should assure payment only to those participating in such activities. It also contains the requirement of section 3306(t)(3)(D) that the individual be actively engaged in a full-time basis in activities relating to the establishment of a business and becoming self-employed.

States are free to establish their own disqualifications for failure to meet these requirements. States should note that, like unavailability for work, failure to participate may be only a temporary condition which should not necessarily result in an indefinite denial. Conversely, quitting the SEA program may be grounds for a duration disqualification. The draft language provides for a disqualification only for the week the failure occurred.

States also have the option of dropping an individual from the SEA program for failure to meet SEA requirements. This may be appropriate if, for example, the individual misses training necessary to commence self-employment activities.

(d) *Limitation on receipt of self-employment assistance allowances.* This section implements section 3306(t)(4), FUTA, which limits the number of individuals receiving SEA allowances at any given time to 5 percent of the number of individuals receiving regular UC. Giving the commissioner authority to create regulations to meet this requirement provides flexibility to the agency to assure that necessary data will be collected as required by this Department and that the five percent limit will not be exceeded.

(e) *Financing costs of SEA allowances.* Since State UC law may provide only for the financing of regular UC and not SEA allowances, it may be necessary to describe the financing mechanism for the allowances. The draft language uses the same mechanism as is used for regular UC.

Draft language for the noncharging of SEA allowances is not provided at this time as the Department is not addressing the issue of whether such allowances may be noncharged at this time.

(f) *Effective Date and Termination Date.* Since SEA allowances may be paid only after enactment of State law and approval by this Department, it will be necessary to specify that the allowances will not become payable until both conditions are met. The draft language assures that SEA allowances will not become payable until the first week aster both conditions are met.

Since the authority under NAFTA for SEA programs terminates five years after the date of enactment of NAFTA, it is recommended that States "sunset" any SEA provisions. The draft language provided does not provide a definite expiration date since States may wish to continue operating a SEA program if the Federal authority is extended either on a temporary or permanent basis. States may, however, wish to include a specific expiration date. The draft language takes into account an expiration of Federal legislative authority which falls on a weekday by providing that the program will terminate as of the end of the week preceding the week containing the ending date of the Federal authority. If, however, the ending date of the Federal authority as a Saturday, then the State must end its SEA program on later than midnight on such Saturday.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior To January 1, 1979," section III.G.2, to the Power Authority of the State of New York the (licensee) for the Indian Point Nuclear Generating Unit No. 3 (IP3), located at the licensee's site in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

Section III.G.2 of 10 CFR part 50, Appendix R, specifies measures to be taken to ensure that one train of redundant equipment necessary to

achieve and maintain hot shutdown conditions remains free of fire damage.

During a programmatic review of IP3's Fire Protection Program and Appendix R compliance strategy, the licensee identified that safe shutdown instrument sensing lines inside containment do not meet the separation requirements of section III.G.2 of 10 CFR part 50, Appendix R. Specifically, in some areas the wide-range steam generator (SG) water level and pressurizer level sensing lines are not separated by a horizontal distance of 20 feet, nor are they separated by a radiant energy shield. In addition, fire detection and suppression in the area is limited. The licensee has, therefore, requested exemption from the requirements of 10 CFR part 50, Appendix R, section III.G.2, for the wide-range SG water level and pressurizer level sensing lines within the IP3 containment structure.

Need for the Proposed Action

The proposed exemption is needed to permit the licensee to operate the plant without being in violation of the Commission's regulations and to obviate the need for extensive modifications. Physical modification of the plant to achieve literal compliance with 10 CFR part 50, Appendix R, section III.G.2, would require many design changes, for example: rerouting portions of the sensing lines, installing additional barriers, and the installation of additional fire suppression and detection. Given the location of the sensing lines, the implementation of these changes would entail extensive scaffolding, as well as engineering and financial resources. In addition, since these modifications were not anticipated in the current outage scope, the detailed development and implementation of such design changes could significantly delay restart from the current outage, resulting in lost revenue.

Environmental Impacts of the Proposed Action

Section III.G.2 of 10 CFR part 50, Appendix R, requires that where redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located within the same fire area inside containment, fire protection must be provided by separation of cables and equipment by a horizontal distance of 20 feet, noncombustible radiant energy shields, or by installation of fire detectors and an automatic fire suppression system in the fire area. The licensee has determined that certain sections of the wide-range SG water level and pressurizer level sensing lines within containment do not meet these requirements. Therefore, the licensee has requested an exemption from the requirement of 10 CFR part 50, Appendix R, section III.G.2, for these sensing lines within the containment.

The likely result of a fire affecting the sensing lines would be erroneous signals. The erroneous signals would not initiate until the fluid inside the lines is heated by the fire and would terminate after the fire was extinguished. The lines themselves would not experience fire damage.

The capability to safely shutdown the unit would not be jeopardized in the event that a fire results in erroneous wide-range SG water level or pressurizer level indications. Specifically, a fire inside containment would not necessitate control room evacuation (i.e., alternate shutdown), so operations personnel would have access to numerous and diverse plant status indications. In addition, plant operating procedures advise personnel that a fire may cause anomalous equipment behavior. Erroneous wide-range SG water level or pressurizer level indications resulting from a fire would be of short duration due to low combustion loadings inside containment. The fixed combustible loading in containment is very small and the locations of the redundant sensing lines are remote from fixed combustibles. The largest fixed combustible load, reactor coolant pump oil, is contained in a collection system in accordance with 10 CFR part 50, Appendix R, section III.O, and automatic smoke detectors are installed above each reactor coolant pump. Personnel access to the containment is restricted during power operation. As such, the potential for transient combustible materials to accumulate in the containment is very low. The containment is inspected by operations personnel prior to plant startup.

Based on the considerations discussed above, the Commission concludes that granting the proposed exemption will not increase the probability of an accident and will not result in any post-accident radiological releases significantly in excess of those previously determined for IP3. The proposed exemption would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. In addition, the exemption does not affect nonradiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

As an alternative to the proposed action, the Commission considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. The alternative would also result in unwarranted expenditures of engineering and financial resources, and could significantly delay restart from the current outage.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the Indian Point Nuclear Generating Station Unit No. 3," dated February 1975.

Agencies and Persons Consulted

The Commission consulted with the State of New York regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated November 30, 1993. This document is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York.

Dated at Rockville, Maryland, this 7th day of March 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

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[Docket No. 50–328]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time schedular exemption from the requirements of sections III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 to the Tennessee Valley Authority, licensee for the Sequoyah Nuclear Plant (SQN), Unit 2. The plant is located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee in its letter dated February 4, 1994.

Environmental Assessment

Identification of Proposed Action

The action would exempt the licensee from the provisions in sections III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 with respect to the requirement to perform Primary Containment Type B and Type C local leak rate tests at intervals no greater than 2 years. The exemption would affect Unit 2 only and allow the tests to be delayed until the Cycle 6 refueling outage. This outage is scheduled to start approximately 4 months after the 2-year period ends.

Between March and April 1992, all Type B and Type C local leak rate tests were preformed during the SQN Unit 2 Cycle 5 refueling outage. Between March 1, 1993, and October 19, 1993, Unit 2 was shut down due to a steam leak in the secondary system, and experienced several forced shutdowns since it was restarted. Due to the accumulated length of the shutdowns, TVA has decided to delay start of the Unit 2 Cycle 6 refueling outage until July 1994. As a result, the expiration of the 2-year time interval for the Type B and Type C tests occurs before the outage starts. Therefore, to perform the tests in accordance with the requirement would force the unit to shut down in April 1994. To prevent this, the proposed exemption would allow a one-time deferment of the Appendix J interval requirement from March 1994 until the shutdown in July 1994. The result would be an interval of approximately 4 months since the previous test for any component.

This environmental assessment is similar to an environmental assessment processed by the Commission and forwarded by letter dated November 9, 1993. It was published in the **Federal Register** on November 16, 1993 (58 FR 60470). This action addressed the 10 CFR part 50 appendix J exemption for the Unit 2 refueling outage when it was scheduled to begin in April 1994.

The Need for the Proposed Action

The proposed action is required to exempt the licensee from the requirement to conduct Type B and Type C containment local leak rate tests on SQN Unit 2 at a 2-year frequency so that the tests can be performed during the Cycle 6 refueling outage that is scheduled to start in July 1994.

Environmental Impacts of the Proposed Action

With respect to the requested action, exemption from the above requirement would allow the licensee to delay conducting Type B and Type C local leak rate tests at Unit 2 approximately 4 months beyond the scheduled expiration date of the 2-year period. This relatively small increase in the test interval does not significantly contribute to the total Type B and Type C leakage limits.

The intent of Sections III.D.2(a) and III.D.3 of appendix J is to ensure that containment leakage is maintained within the prescribed limits. Based on the following information, the exemption will not significantly affect the ability of the individual primary containment components that are subject to Type B or Type C tests to perform this safety function:

1. The valves and components for which the extension of the 2-year interval is being requested have a history of being leak tight and in good condition. The leak-tight condition of these components was last verified by Type B and C local leak rate tests conducted during the Cycle 5 refueling outage in 1992 and, at least for many, by the Type A containment leak rate test conducted on Unit 2 during the same refueling outage. Based on the present containment leakage that accounts for the less than 8.0 percent of the 0.6 percent La limit, the remaining margin is sufficient to ensure any incremental increase in leakage resulting from the extension would not cause unacceptable as-found test results.

2. Based on historical data, any incremental increase in leakage because of the extension will be small. Improved maintenance practices implemented during the Unit 2 Cycle 5 outage, including motor operated valve testing of containment isolation valves, periodic replacement of valve packing, and periodic lubrication of valve stems, provide increased assurance that these components will perform their safety function.

3. Many of the components for which the exemption is requested were included in the Type A test performed in April 1992. This test indicated a containment leak rate of 0.15 percent per day, which is below the 0.1875 percent per day limit.

With regard to other potential radiological environmental impacts, the proposed exemption does not increase the radiological effluents from the facility and does not increase the occupational exposure at the facility. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological environmental impacts, the proposed exemption involves systems located within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other significant nonradiological environmental impacts associated with the proposed exemption.

Therefore, the proposed exemption does not significantly change the conclusions in the licensee's "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plant Units 1 and 2" (FES), dated February 21, 1974. The Commission concluded that operation of the Sequoyah units will not result in any environmental impacts other than those evaluated in the FES and its letter to the licensee dated September 15, 1981, which granted the facility operating license DPR–79 for Unit 2.

Alternative to the Proposed Action

Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this exemption will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Sequoyah Nuclear Plant, Units 1 and 2," dated February 21, 1974.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request. The staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's request for an exemption dated February 4, 1994, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 7th day of March 1994.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5828 Filed 3–11–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–528, 50–529, and 50–530]

Arizona Public Service Co.; Consideration of Transfer of Control of Ownership of Licensee and Opportunity for Public Comment on Antitrust Issues

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under 10 CFR 50.80 of the indirect transfer of control of El Paso Electric Company's (El Paso) interest in Palo Verde Nuclear Generating Station (PVNGS) Units 1, 2, and 3, (Operating License Nos. NPF–41, NPF–51, and NPF–74) to a subsidiary of the Central and South West Corporation (CSW). By letter dated January 13, 1994, Arizona Public Service Company (APS), partial owner and operator and operating agent for PVNGS submitted its request for indirect transfer and deletion of sale-leaseback provisions, pursuant to 10 CFR 50.80. The request for license amendments to delete the provisions of certain previous sale-leaseback arrangements relating to Operating License Nos. NPF–51 and NPF–74 will be subject of a separate **Federal Register** notice.

Pursuant to 10 CFR 50.80 the Commission may approve the transfer of control of a licensee, after notice to interested persons, upon the Commission's determination that the new owner is qualified to have control of the license and the transfer of control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission.

By this notice the Commission is seeking public comment on this proposed transfer of control of ownership. Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulation Commission, Washington, DC 20555 and should site the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–233, Phillips Buildings, 7920 Norfolk Avenue, Bethesda, Maryland between 7:30 a.m. and 4:15 p.m. Copies of written comments may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Antitrust Issues

Pursuant to 10 CFR 2.101 of the Commission's regulations, the staff is publishing receipt of APS's request to transfer the above described control of ownership of PVNGS.

Any person who wishes to submit comments or information relating to antitrust issues believed to be raised by this transfer request should submit said comments or information within 30 days of the initial publication of this notice in the **Federal Register** to the U.S. Nuclear Regulation Commission, Washington, DC 20555, Attention: Chief, Inspection and Licensing Policy Branch, Office of Nuclear Reactor Regulation. The Director of the Office of Nuclear Reactor Regulation will issue a finding whether significant changes in the licensees' activities have occurred since the completion of the previous antitrust review.

Although the staff is providing the opportunity for comments concerning the competitive aspects of the proposed transfer, the staff notes that it is aware of and is closely following a proceeding at the Federal Energy Regulatory Commission (FERC) involving CSW's proposed acquisition of El Paso. The NRC will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC.

For further details with respect to the subject transfer, see the request for transfer of control dated January 13, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland the 7th day of March 1994.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5827 Filed 3–11–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–09792–CivP, ASLBP No. 94–689–02–CivP]

Indiana University School of Medicine, Indianapolis, IN; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

INDIANA UNIVERSITY SCHOOL OF MEDICINE

Indianapolis, Indiana

Byproduct Material License No. 13–02752–08, EA 93–111

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Director, Office of Enforcement, dated January 18, 1994, entitled "Order Imposing Civil Monetary Penalty" (58 FR 4123–25, January 28, 1994).

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

James P. Gleason, Chairman Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Thomas D. Murphy Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 4th day of March 1994.

Paul B. Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94-5825 Filed 3-11-94; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33730; File No. SR-CBOE-94-01]

Self-Regulatory Organizations: Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Trade Recording and Price Reporting

March 8, 1994.

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 January 22, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III 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

Currently, Interpretation and Policy .01 to CBOE rule 6.51, "Reporting Duties," requires both the buyer and the seller in a transaction to record on a card or ticket information concerning the transaction, including the buyer's or seller's assigned broker initial code and his clearing firm (if a market maker), the symbol of the underlying security, the type, expiration month and exercise price of the option contract, the transaction price, the number of contract units comprising the transaction, the time of the transaction, the name of the contra clearing firm member and the assigned broker initial code of the contra member. Under Interpretation and Policy .01, this information constitutes the "transaction record." The CBOE proposes to amend Interpretation and Policy .01 to allow members to submit options transaction data to the Exchange for trade recording and price reporting purposes in various media in addition to paper form.

The text of the proposal is available at the Office of the Secretary, CBOE, 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 IV 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

The CBOE states that the purpose of the proposal is to enable CBOE members to submit options transaction data to the CBOE for trade recording and price reporting purposes in various media in addition to paper form. Under current CBOE rule 6.51, members are required to submit transaction data in paper form only, either on a trade ticket or on a transaction card. The CBOE states that in today's market and operations technology environment the limitation is unduly restrictive, and some Exchange members have requested the opportunity to submit transaction record data by means of electronic data transmission. Submission in that form would enable those members to report trades and prices to the CBOE through the same automated medium they use to report that information to their clearing firms. Accordingly, the CBOE seeks authority to approve particular media in addition to paper that CBOE members may use for trade recording and price reporting purposes.

In administering the proposed rule change, the CBOE will from time to time identity particular media and formats acceptable for use under Exchange Rule 6.51 based on members' needs and will inform members about acceptable media and formats through appropriate circulars. The CBOE expects to identify as acceptable only those media that involve secure and tested technology.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to facilitate cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, consistent with the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days after the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. 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 person, 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 at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

[1] 17 CFR 200.30-3(a)(12) (1993).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5837 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 33734/March 8, 1994; File No. 600–25]

The Registration as a Clearing Agency of the Participants Trust Co., Order Granting Approval of Registration Until March 31, 1995

On January 26, 1994, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] an amendment to its Form CA–1[2] requesting that the Commission extend PTC's registration as a clearing agency until March 31, 1995. Notice of PTC's amended application and request for extension of temporary registration appeared in the **Federal Register** on February 15, 1994.[3] No comments were received. This order approves PTC's amendment by extending PTC's registration as a clearing agency until March 31, 1995.

On March 28, 1989, the Commission granted PTC temporary registration as a clearing agency pursuant to sections 17A and 19(a) of the Act, and rule 17Ab2–1 thereunder for a period of twelve months.[4] Subsequently, the Commission issued orders that extended PTC's temporary registration as a clearing agency, the last of which extended PTC's registration until March 31, 1994.[5]

As discussed in detail in the initial order granting PTC's temporary registration,[6] one of the primary reasons for PTC's registration was to develop depository facilities for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association ("GNMA"). PTC services include certificate safekeeping, book entry deliveries, an automated facility for the pledge or segregation of securities, and other services related to the immobilization of securities certificates.

PTC continues to make significant progress in the areas of financial performance, regulatory commitments, and operational capabilities. The par value of GNMA securities on deposit grew from $706 billion on December 31, 1992 to $850 billion on December 31, 1993.[7] The par value of VA REMICs on deposit at PTC grew from $1.608 billion on December 31, 1992 to $4.634 billion on December 31, 1993.[8] The average transaction volume grew from 250,000 in 1992 to 309,000 in 1993.[9]

PTC continued its efforts over the past year to implement operational and procedural changes in connection with PTC's temporary registration.[10] For example, PTC acquired rights to the SPEED source code, thereby facilitating the process of enhancing the SPEED system to suit PTC's needs. PTC also initiated a program to distribute to participants a portion of GNMA I principal and interest ("P&I") earlier in the day,[11] and in December 1993, introduced a new P&I processing system, PRISM, that further automates P&I data processing. PTC was able to reduce its fees to participants further, effective January 1, 1994,[12] and declared a dividend of $.525 per share to stockholders of record on December 31, 1993.[13]

Although PTC has made considerable progress toward complying with the undertakings set out above, PTC needs more time to implement fully the changes necessary for compliance. Accordingly, PTC has requested that the Commission extend PTC's registration as a clearing agency until March 31, 1995, to permit PTC to gain experience and stability as a fully operative depository and to comply fully with the undertakings made in connection with PTC's registration.[14]

The Commission believes that PTC continues to meet the determinations enumerated in section 17A(b)(3). PTC has facilitated the prompt and accurate clearance and settlement of mortgage-backed securities. PTC has functioned as a clearing agency for the past four years in compliance with the Act.

It is therefore ordered, that PTC's temporary registration as a clearing agency be, and hereby is, extended until March 31, 1995, subject to the terms, undertakings, and conditions specified in Securities Exchange Act Release No. 26671.[15]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5836 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33722; File No. SR–ICC–94–03]

Self-Regulatory Organizations; The Intermarket Clearing Corporation; Filing and Order Granting Temporary Approval on an Accelerated Basis to a Proposed Rule Change Relating to Revisions to the Standards for Letters of Credit Deposited as Margin

March 7, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 23, 1994, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by ICC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through December 31, 1994.

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[1] 15 U.S.C. 78s(a).

[2] Letter from John J. Sceppa, President and Chief Executive Officer, PTC, to Judith Poppalardo, Assistant Director, Division of Market Regulation, Commission, dated January 25, 1994.

[3] Securities Exchange Act Release No. 33604 (February 8, 1994), 59 FR 7285.

[4] Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

[5] Securities Exchange Act Release Nos. 27858 (March 28, 1990), 55 FR 12614; 29024 (March 28, 1991), 56 FR 13848; 30537 (April 9, 1992), 57 FR 12351; and 32040 (March 23, 1993), 58 FR 16902.

[6] *Supra* note 4.

[7] *Supra* note 2.

[8] *Id.*

[9] *Id.*

[10] In connection with PTC's original temporary registration, PTC committed to the Commission and the Federal Reserve Bank of New York to make a number of operational and procedural changes, which include:

(1) Eliminating trade reversals from PTC's procedures to cover a participant default;

(2) Phasing out the aggregate excess net debit limitation for extensions under the net debit monitoring level procedures;

(3) Making principal and interest advances, now mandatory, optional;

(4) Allowing participants to retrieve securities in the abeyance account and not allowing participants to reverse a transfer because its customer may not be able to fulfill its financial obligations to the participant.

(5) Eliminating the deliverer's security interest and replacing it with a substitute;

(6) Reexamining PTC's account structure rules to make them consistent with PTC's lien procedures;

(7) Expanding and diversifying PTC's lines of credit;

(8) Assuring operational integrity by developing and constructing a back-up facility; and

(9) Reviewing PTC rules and procedures for consistency with current operations.

Supra note 4.

[11] Securities Exchange Act Release No. 33132 (November 2, 1993), 58 FR 59501.

[12] Securities Exchange Act Release No. 33362 (December 21, 1993), 58 FR 69433.

[13] Securities Exchange Act Release No. 33487 (January 18, 1994), 59 FR 3900.

[14] *Supra* note 2.

[15] *Supra* note 4.

[16] 17 CFR 200.30–3(a)(50) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change requests that the Commission extend its temporary approval of ICC's modifications to its rules setting forth the standards for letters of credit deposited with ICC as a form of margin.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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 IV below. ICC 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

The proposed rule change requests that the Commission extend its temporary approval of ICC's modifications to its rule 502(a)(3), which sets forth the standards for letters of credit deposited with ICC as margin. The modifications which are the subject of this proposed rule filing are the same modifications which were previously approved by the Commission.[3]

First, ICC intends to require that letters of credit state expressly that payment must be made prior to the close of business on the third banking day following demand. Second, ICC proposes to amend its rules to eliminate the issuer's right to revoke the letter of credit. Third, unless otherwise permitted by ICC, ICC's proposal requires letters of credit to expire on a quarterly basis rather than annually. Fourth, ICC proposes to add language to its rules to make explicit ICC's authority to draw upon a letter of credit at any time, whether or not the clearing member that deposited the letter of credit has been suspended or is in default, if ICC determines that such a draw is advisable to protect ICC, other clearing members, or the general public.

Finally, ICC proposes to amend its rules to grant its chairman limited discretion to accept a letter of credit that varies from the standards set forth in its rules. This discretionary power will be limited by the following factors: (1) Before using this power, the chairman must consult with the staffs of ICC's regulatory agencies, which include the Commission and the Commodity Futures Trading Commission ("CFTC"); (2) this power can be used only in unusual circumstances and only on a temporary basis; (3) after exercising such power, the chairman must advise ICC's board of directors; and (4) ICC must promptly notify clearing members affected by the exercise of this power.[4] ICC believes the proposed rule change is consistent with the requirements of section 17A of Act.[5] Specifically, ICC believes the proposed rule change promotes the protection of investors by enhancing ICC's ability to safeguard the securities and funds in its possession or subject to its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

For the reasons set forth in the previous Commission order approving ICC's revised standards for letters of credit deposited as margin, the Commission believes that the proposal is consistent with ICC's obligations under section 17A(b)(3)(F) of the Act.[6] Among other things, the revised standards: (1) Should make the letters of credit ICC will accept as margin deposits more liquid than under the previous standards and, consequently, should permit ICC to more safely rely upon such letters of credit; (2) should result in more frequent assessments of the financial conditions of clearing members depositing letters of credit and thereby should facilitate the discovery of any adverse developments in a more timely manner: and (3) should make letters of credit a more reliable form of margin deposit than previously because issuers will no longer be able to revoke letters of credit at times when clearing members most need credit facilities (*e.g.*, when a clearing member is experiencing financial difficulties or during times of market volatility).[7] By approving the proposed rule change on a temporary basis through December 31, 1994, ICC, the Commission, and other interested parties will be able to assess further any effects these revised standards have on letter of credit issuance and on margin deposited at ICC.[8]

ICC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving because the Commission believes it is desirable that the revised standards that were implemented under the previous temporary approval order remain in place pending permanent approval.

IV. 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

[2] Securities Exchange Act Release Nos. 32003 (March 16, 1993), 58 FR 15389 [File No. SR-ICC-92-01] (order approving revised letter of credit standards through December 31, 1994).

[3] For a detailed discussion of the revised standards, refer to Securities Exchange Act Release Nos 32003, *supra* note 2.

[4] Factors (1) and (2) are set forth in ICC Rule 502(a)(3). Factors (3) and (4) are set forth in the letter from James C. Yong, Vice President and Assistant Secretary, ICC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (March 1, 1993), which amended File No. SR-ICC-92-01. ICC has represented that the March 1, 1993, letter with all its requirements for use by ICC's Chairman of his limited discretion to accept a letter of credit that varies from the standards is applicable to this proposed rule filing. Conversation between James C. Yong, Vice President and Assistant Secretary, ICC, to Jerry W. Carpenter, Branch Chief, Division, Commission (March 4, 1994).

[5] 15 U.S.C. 78q-1

[6] 15 U.S.C. 78q-1(b)(3)(F) (1988). Among other things, section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible.

[7] For a detailed discussion of the Commission's basis for approving ICC's revised standards, refer to Securities Exchange Act Release Nos. 32003, *supra* note 2.

[8] The Commission and ICC currently are studying concentration limits on letters of credit deposited as margin. The Division believes that clearing agencies that accept letters of credit as margin deposits or clearing fund contributions should limit their exposure by imposing concentration limits on the use of letters of credit. Generally, clearing agencies impose limitations on the percentage of an individual member's required deposit or contribution that may be satisfied with letters of credit, limitations on the percentage of the total required deposits or contributions that may be satisfied with letters of credit by any one issuer, or some combination of both. ICC has no concentration limits on the use of letters of credit issued by U.S. institutions.

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 person, 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 ICC. All submissions should refer to the file number SR–ICC–94–04 and should be submitted by April 4, 1994.

V. Conclusion

On the basis of the foregoing, the Commission finds that ICC's proposed rule change is consistent with the Act and in particular with Section 17A of the Act.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposal (File No. SR–ICC–94–03) be, and hereby is, approved through December 31, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5807 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33731; File No. SR–NASD–94–11]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Assessments and Fees on Members

March 8, 1995.

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 February 25, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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 NASD is proposing to add new section 45 to the Code of Arbitration Procedure to require that any member named as a party to an arbitration proceeding shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. Below is the text of the proposed rule change. Proposed new language is italicized.

Part III. Uniform Code of Arbitration

* * *

Member Surcharge

Sec. 45. (a) Each member who is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Crossclaim or Third-Party claim, shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Subsection 43(c) of the Code.

(B) For the purposes of this Section, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Subsection 25(a) of the Code.

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 NASD 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 IV below. The NASD 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

The NASD is proposing to add new section 45 to the Code of Arbitration Procedure to provide that any member named as a party to an arbitration proceeding shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. In addition, any firm whose associated persons are named in an arbitration proceeding will be assessed the surcharge.

Historically, the revenue-to-expense ratio of the NASD's arbitration service has resulted in a deficit, which has been subsidized by other revenues of the Association. Although the deficit has declined in 1992, the NASD has determined in a recent review of the arbitration process that the deficit will begin to rise in the immediate future as a result of significantly increased resourcing needs. The NASD anticipates such needs to be ongoing. The increased resourcing needs result from a number of factors, including case growth, more selective arbitrator recruitment, increased arbitrator training, increased arbitrator compensation, and the anticipated overhaul of the arbitration administrative systems. The NASD determined that the time frame within which to initiate cost recovery for impending resourcing needs should be the immediate future, and that cost recovery should be directed at those member firms using the NASD's arbitration service.

Proposed new subsection (a) would require each member who is named as a party to an arbitration proceeding, whether in a claim, counterclaim, crossclaim or third-party claim, to be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. This fee would be in addition to fees assessed pursuant to section 43[1] and 44[2] of the Code. The fee applies both to members who file as Claimants and to members who are served by the Arbitration Department as Respondents. Therefore, in claims brought by members, the $200 fee would be assessed in addition to the $500 claim filing fee described in the current fee schedule. For an associated person who is named as a party to an arbitration proceeding, the fee would be

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[9] 17 CFR 200.30–3(a)(12) (1993).

[1] *NASD Manual*, Code of Arbitration Procedure, Article III, Sec. 43 (CCH) ¶ 3743.

[2] *NASD Manual*, Code of Arbitration Procedure, Article III, Sec. 44 (CCH) ¶ 3746.

assessed against the member firm or firms which employed the associated person at the time of the events which gave rise to the claim. However, no member will be assessed more than a single charge in any arbitration proceeding. Finally, subsection (a) clarifies that the surcharge is not subject to reimbursement under subsection 43(c) of the Code.

The NASD estimates that it will collect the $200 surcharge on 75 percent of the approximately 5700 arbitration cases expected to be filed in 1994, which will result in over $800,000 of additional revenue for the Arbitration Department in 1994. Thus, the surcharge will effectively offset expenses to be incurred on arbitrator education through 1994. The NASD expects the arbitrator education program to reach over 3,000 new arbitrators and almost 500 chairpersons during the period that began in the fourth quarter of 1993 and will end at the end of 1994. This will add over $750,000 to the Arbitration Department expenses, which will include costs for staff and travel time, conference rooms, written materials, videotape production and mailing costs.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) [3] of the Act, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members in that the proposed rule equitably assesses a surcharge on each member that is named or whose associated person is named and for which service is perfected in an arbitration proceeding and applies such revenue to additional costs resulting from increased arbitration resourcing needs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19b–4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. 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 person, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–94–11 and should be submitted by April 4, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5808 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78o-3.

[Release No. 34–33582A; File No. SR–ODD–94–1]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Amendment to the Options Disclosure Document; Correction

March 8, 1994.

In FR Document No. 94–3250, beginning on page 6661, column 1, for Friday, February 11, 1994, a sentence was incorrectly stated. The first paragraph should be changed to clarify that the National Association of Securities Dealers, Inc., did not participate in the submission of the revised Options Disclosure Document ("ODD") and to indicate that the Options Clearing Corporation ("OCC") filed the revised ODD on behalf of, rather than in conjunction with, the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

The first paragraph is revised to read as follows:

On February 2, 1994, the Options Clearing Corporation ("OCC") on behalf of the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc. ("PHLX") submitted amended copies of an options disclosure document ("ODD") to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Rule 9b–1 [1] of the Securities Exchange Act of 1934 ("Act").

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5835 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 240.9b–1 (1993).

[Rel. No. IC–20121; File No. 812–8748]

Century Life of America, et al.; Application

March 8, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Century Life of America ("Century Life"), Century Variable Annuity Account (the "Account") and CUNA Brokerage Services, Inc. (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to deduct a daily charge from the assets of the Account for mortality and expense risks in connection with the offering of certain variable annuity contracts.

FILING DATE: The application was filed on December 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving

Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 4, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Century Life of America, 2000 Heritage Way, Waverly, Iowa 50677.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. Century Life, a mutual life insurance company organized under the laws of Iowa, entered into a permanent affiliation with CUNA Mutual Life Insurance Society ("CUNA Mutual") on July 1, 1990. Applicants state that the terms of the "Agreement of Permanent Affiliation" provide for the following: Financial sharing between Century Life and CUNA Mutual of future individual life insurance business through reinsurance arrangements; joint development of business plans and systems for the distribution of individual insurance and other financial service products within the credit union movement; and, sharing of certain resources and facilities. All of the directors of Century Life are also directors of CUNA Mutual and many of the senior executive officers of Century Life hold similar positions with CUNA Mutual. Applicants state that the affiliation is not a merger or a consolidation and that both Century Life and CUNA Mutual remain separately owned by their respective contract owners who retain voting rights.

2. The Account, established by Century Life on December 14, 1993 as a separate investment account under Iowa law, serves as a funding medium for certain flexible premium individual deferred variable annuity contracts (the "Contracts"). Applicants state that the Account meets the definition of a "separate account" under the federal securities laws. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33–73738), for the Account.

3. The Account currently has five subaccounts, each of which invests exclusively in the shares of a designated investment portfolio of the Ultra Series Fund (the "Fund"). The Fund, a Massachusetts business trust, is registered under the 1940 Act as an open-end diversified management investment company. The Fund currently has six investment portfolios, five of which offer their shares to the Account.

4. The Contracts may be purchased on a nontax qualified basis (the "Nonqualified Contracts") or they may be purchased in connection with retirement plans, including retirement programs described in sections 401(a) or 403(b) of the Internal Revenue Code of 1986, as amended (the "Code"), or as individual retirement annuities that qualify for favorable federal income tax treatment under section 409 of the Code (together, the "Qualified Contracts").

5. CUNA Brokerage Services, Inc. ("CUNA Brokerage") acts as the principal underwriter, as defined in the 1940 Act, of the Contracts pursuant to the terms of an underwriting agreement between Century Life and CUNA Brokerage. The principal business address of CUNA Brokerage is the same as that of CUNA Mutual.

6. An owner of a Contract may allocate purchase payments to one or more subaccounts of the Account, and the purchase payments will be credited with the investment experience of the chosen subaccount or subaccounts. An owner of a Contract may also allocate purchase payments to the guaranteed interest option, part of the general account of Century Life, and such payments will be credited with interest as provided for in the Contracts.

7. The minimum initial purchase payment for Nonqualified Contracts is $5,000 and for Qualified Contracts, other than those sold in connection with tax sheltered annuity arrangements ("TSAs"), the amount is $2,000. Subsequent purchase payments must be at least $1,000 and may be made any time before the annuity date and during the annuitant's lifetime. Initial and subsequent purchase payments for TSAs must be at least $25, and such payments in each Contract year must total $300 and be paid pursuant to a schedule.

8. The Contract provides for a series of annuity payments beginning on the annuity date. The Contract owner may select from four annuity payment options, two of which are available only as a fixed annuity and two of which are available as either a variable or a fixed annuity.

9. If the owner of a Contract dies prior to the annuity date and the Contract is in force, Century Life will, upon receipt of due proof of death, pay a death benefit. If the annuitant is age 75 or younger, the death benefit is equal to the greatest of:

(a) Aggregate purchase payments made under the Contract less partial withdrawals as of the date that Century Life receives due proof of death; or

(b) Contract value as of the date that Century Life receives due proof of death; or

(c) The death benefit floor amount as of the date of death plus any net purchase payments and minus any partial withdrawals made since the most recent death benefit floor computation anniversary;

less premium taxes not previously deducted and any outstanding loan amount on the date the death benefit is paid. The death benefit floor amount is the Contract value on the most recent death benefit floor computation anniversary. Death benefit floor computation anniversaries occur on the seventh Contract anniversary and each seventh Contract anniversary thereafter prior to the annuitant's 76th birthday. After the annuitant's 76th birthday, the death benefit will equal the Contract value less any outstanding loan amount and any applicable premium taxes not previously deducted as of the date that Century Life receives due proof of the annuitant's death.

10. On each Contract anniversary prior to the annuity date, Century Life deducts from the variable Contract value an annual fee of $30. Applicants guarantee that this charge will not increase and state that the charge reimburses Century Life for administrative expenses relating to the Contract. The fee will be deducted from each subaccount based on the proportion that the value in each such subaccount bears to the total Contract value. After the annuity date, the annual Contract fee is deducted from variable annuity payments. Applicants represent that this charge will be deducted in reliance upon Rule 26a-1 under the 1940 Act and that the charge represents reimbursement only for administrative costs expected to be incurred over the life of the Contract. Applicants further represent that Century Life does not anticipate a profit from this charge.

11. Century Life deducts a daily administrative charge equal to an annual effective rate of .15% of the assets of the Account. The application states that this charge will compensate

Century Life for certain expenses incurred in administering the Contracts. Applicants represent that this charge will be deducted in reliance upon Rule 26a-1 under the 1940 Act and that the charge represents reimbursement only for administrative costs expected to be incurred over the life of the Contract. Applicants further represent that Century Life does not expect to make a profit from this charge.

12. Although no fee is currently charged for transfers, Century Life reserves the right to charge $10 for the 13th and each subsequent transfer during a Contract year. The transfer fee will be deducted from the subaccount or guarantee amount from which the transfer is made. Applicants represent that where the fee is imposed, Applicants will rely upon Rule 26a-1 under the 1940 Act for the deduction. Applicants state that the transfer fee will represent reimbursement only for administrative costs expected to be incurred over the life of the Contract. Applicants further represent that Century Life does not anticipate a profit from this charge.

13. Applicants note that various governmental entities levy a premium tax, currently ranging up to 3.5%, on annuity contracts, such as the Contracts, issued by insurance companies. The timing of the tax levies varies among taxing authorities. The application states that if applicable to a Contract, premium taxes will be deducted either: (a) From purchase payments as received; (b) from Contract value upon withdrawal or surrender; (c) from adjusted Contract value upon application to an annuity payment option; or (d) upon payment of a death benefit. Applicants note that Century Life reserves the right to deduct premium taxes at the time such taxes are incurred.

14. A contingent deferred sales charge (the "Sales Charge") of up to 7% is imposed on the partial withdrawal or surrender of purchase payments within seven years of such payments having been made. The Sales Charge is deducted from the Contract value remaining after withdrawal so that the reduction in Contract value as a result of a withdrawal will be greater than the withdrawal amount requested. Amounts obtained from imposition of the Sales Charge will be used to cover expenses relating to the sale of the Contracts, including payment of commissions to registered representatives and other promotional expenses. Applicants state that Century Life does not anticipate that the Sales Charge will generate sufficient revenues to pay the cost of distributing the Contracts. If the Sales Charge is insufficient to cover the cost of distribution, the deficiency will be met from the general account assets of Century Life and these assets may include amounts derived from the charge for mortality and expense risks.

15. Century Life will impose a daily charge equal to an annual effective rate of 1.25% of the value of the net assets of the Account to compensate Century Life for bearing certain mortality and expense risks in connection with the Contracts. Approximately .85% of the 1.25% charge is attributable to mortality risk, and approximately .40% is attributable to expense risk. Century Life guarantees that this charge will never exceed 1.25%. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks under the Contracts, Century Life will bear the loss. Conversely, if the charge exceeds costs, the excess will be profit to Century Life. Applicants state that Century Life currently anticipates a profit from this charge.

16. Applicants state that the mortality risk borne by Century Life arises from its contractual obligation to make annuity payments (as determined in accordance with the Contracts) regardless of how long all annuitants or any individual annuitant may live. Applicants state that this undertaking assures that neither annuitant's own longevity nor an improvement in general life expectancy will adversely affect the periodic annuity payments that a payee will receive under the Contract. Applicants state that Century Life also incurs a risk in connection with the death benefit guarantee and that there is no charge for this guarantee.

17. Applicants state that the expense risk assumed by Century Life is the risk that administration costs will exceed amounts received by Century Life through imposition of the administration charge, the transfer fee (where imposed) and the annual Contract fee.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for mortality and expense risks. Sections 26(a)(2)(C) and 27 (c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

2. Applicants assert that the charge for mortality and expense risks is reasonable in relation to the risks assumed by Century Life under the Contracts. Applicants state that the charge is a reasonable charge to compensate Century Life for the risks that: the annuitants under the Contracts will live longer than has been anticipated in setting the annuity rates guaranteed in the Contracts; the Contract value will be less than the death benefit; and administrative expenses will be greater than amounts derived from the asset-based administration charge, the transfer fee and the Contract fee.

3. Applicants represent that the charge of 1.25% for the mortality and expense risks assumed by Century Life is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon Century Life's analysis of publicly available information about similar industry practices, taking into consideration such factors as: current charge levels; charge level guarantees; and guaranteed annuity rates. Applicants represent that Century Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey.

4. Applicants represent that Century Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Century Life and will be made available to the Commission.

5. Century Life also represents that the Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the company's board of directors, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5838 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20118; 812–8484]

The One® Group℠, et al.; Notice of Application

March 7, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The One® Group℠ ("The One Group"), The Kent Funds, Allmerica Funds, and The Valiant Funds (collectively, the "Trusts"); Banc One Investment Advisors Corporation ("BOIAC"), Old Kent Bank and Trust Company ("Old Kent"), Allmerica Investment Management Company, Inc. ("AIMCO"), and Integrity Management & Research, Inc. ("IMR") (collectively, the Advisers"); and Allmerica Investments, Inc. ("Allmerica"), 440 Financial Distributors, Inc. ("440 Distributors"), and Integrity Investments, Inc. ("Integrity") (collectively, the "Distributors"). Applicants also seek relief on behalf of future investment companies for which the Advisers, or any person controlled by or under common control with the Advisers, may serve as investment adviser, or for which the Distributors, or any person controlled by or under common control with the Distributors, may serve as distributor.

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to issue and sell multiple classes of shares representing interests in the same portfolios of securities, assess a contingent deferred sales charge ("CDSC") on certain redemptions, and waive the CDSC in certain instances.

FILING DATE: The application was filed on July 2, 1993, and amended on November 12, 1993, January 31, 1994, and February 23, 1994. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 1, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 440 Lincoln Street, Worcester, Massachusetts 01653.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

APPLICANTS' REPRESENTATIONS: 1. Each of the Trusts is a registered open-end management investment company organized as a Massachusetts business trust. Each of the Trusts offers shares in separate series (the "series"). BOIAC, Old Kent, AIMCO, and IMR act as investment advisers for The One Group, The Kent Funds, Allmerica Funds, and The Valiant Fund, respectively. 440 Distributors acts as distributor for The One Group, and will act as distributor for The Kent Funds beginning April 1, 1994. Allmerica and Integrity act as distributors for Allmerica Funds and The Valiant Fund, respectively. 440 Financial Group of Worcester, Inc. ("440 Financial") serves as administrator and sub-transfer agent for The One Group, administrator and transfer agent for The Valiant Fund, and will serve as the administrator and transfer agent for The Kent Funds beginning April 1, 1994. AIMCO, Allmerica, 440 Distributors, and 440 Financial are all wholly-owned subsidiaries of State Mutual Life Assurance Company of America.

2. Series of The One Group currently offer shares in four classes pursuant to exemptive orders previously granted by the SEC.[1] Class A shares of The One Group's series, other than class A shares of money market series, are sold subject to a front-end sales charge. Class B shares, which are available only with respect to non-money market series, are sold subject to a CDSC. Retirement class shares are offered to certain investors without any front-end or deferred sales charge. Fiduciary class shares are offered to certain investors without a front-end or deferred sales charge. Class A, class B, and the retirement class shares are authorized to pay 440 Distributors distribution and shareholder services fees pursuant to a

[1] SEI Liquid Asset Trust, *et al.*, Investment Company Act Release Nos. 17144 (Sept. 20, 1989) (notice) and 17169 (Oct. 18, 1989) (order), as amended, Investment Company Act Release Nos. 17878 (Nov. 27, 1990) (notice) and 17915 (Dec. 24, 1990) (order), as amended, Investment Company Act Release Nos. 19698 (Sept. 9, 1993) (notice) and 19756 (Oct. 1, 1993) (order). On November 17, 1993, The One Group received no-action relief so that, pending receipt of the order requested hereby, it can continue to offer its shares for up to one year in reliance on prior orders.

rule 12b–1 plan in annual amounts up to .35%, 1%, and .75% of average daily net assets, respectively.

3. Series of The Kent Funds currently offer two classes of shares pursuant to an exemptive order granted to The Kent Funds and its current distributor.[2] Investment class shares of The Kent Funds' series, other than investment class shares of money market series, are sold subject to a front-end sales charge. Institutional class shares of the Kent Funds' series are sold without a front-end or deferred sales charge. Each series of The Kent Funds is authorized to pay 440 Distributors a monthly shareholder services fee of up to .25% of the series' average daily net assets pursuant to a rule 12b–1 plan.

4. Shares of series of Allmerica Funds, other than money market series, are sold subject to a front-end sales charge. For purchases of $1,000,000 or more of shares of Allmerica Funds' non-money market series, no front-end sales charge is imposed but a 1% CDSC is imposed on certain redemptions. The CDSC is assessed in reliance upon an exemptive order granted by the SEC.[3] Under a rule 12b–1 plan, series of Allmerica Funds pay Allmerica a shareholder services fees in the amount of up to .25% of average daily net assets of the non-money market series, and up to .10% of the average daily net assets of the money market series.

5. The Valiant Fund offers its series at net asset value without any sales charge. The Valiant Fund has adopted a rule 12b–1 plan, but no payments have been authorized or will be made during the current fiscal year.

6. Applicants seek relief to implement a proposed multiple pricing system (the "Multiple Pricing System"). Under applicants' proposal, the non-money market series of the Trusts will provide investors the option of purchasing shares: (a) with a front-end sales load and in certain circumstances a distribution fee of up to .75% ("Class A shares"); (b) subject to a CDSC and distribution and shareholder services fees of up to 1% ("Class B shares"); (c) subject to a CDSC that will normally be lower than the CDSC imposed on Class B shares and a distribution and shareholder services fees of up to 1% ("Class C shares"); and (d) without a sales charge and either with or without distribution and shareholder services fees of up to .75% ("Class D shares"). Each of the money market series of the Trusts will provide investors the option of purchasing shares: (a) without a sales load and subject to a distribution fee of up to .35% ("Class E shares"); (b) without a sales load and subject to distribution and shareholder services fees of up to .75% ("Class F shares"); and (c) without sales charges or distribution fees ("Class G"). Each series' rule 12b–1 plan will be amended as necessary to accommodate the proposed fee arrangements of each class.

7. Existing shares of The One Group correspond to shares authorized under the Multiple Pricing System as follows: Class A shares of the non-money market series correspond to Class A shares, and class A shares of the money market series correspond to Class E shares; class B shares correspond to Class B shares; retirement class shares of the non-money market series correspond to Class D shares, and retirement class shares of the money market series correspond to Class F shares; fiduciary class shares of the non-money market series correspond to Class D shares, and fiduciary class shares of the money market series correspond to Class G shares. Existing shares of The Kent Fund correspond to shares authorized under the Multiple Pricing System as follows: investment class shares of the non-money market series correspond to Class A shares, and investment class shares of the money market series correspond to Class E shares; institutional class shares of the non-money market series correspond to Class D shares, and institutional class shares of the money market series correspond to Class F shares. Shares of Allmerica Funds' existing non-money market series will be redesignated Class A, and shares of the existing money market series will be redesignated Class E.

8. From time to time each Trust also may offer additional classes of shares. Certain of these additional classes ("Indirect Investor Classes") will be offered only to Qualified Institutional Investors (as defined herein). All classes of shares other than the Indirect Investor Classes, including Classes A, B, C, D, E, F, and G, will be referred to herein as "Direct Investor Classes." Qualified Institutional Investors eligible to purchase Indirect Investor Classes are limited to the following five categories: (a) benefit plans such as qualified retirement plans, other than individual retirement accounts and retirement plans of self-employed persons, with total assets in excess of $5 million or such other amounts as the Trusts may establish and with such other characteristics as the Trusts may establish; (b) defined contribution retirement plans maintained by the Advisers or their affiliates for the benefit of their employees; (c) banks and insurance companies purchasing shares for their own accounts; (d) registered investment companies not affiliated with 440 Financial or with any of the Advisers; and (e) endowment funds of non-profit organizations.

9. The benefit plans in category (a) will have a separate trustee for the plan who is vested with investment discretion as to plan assets. The plan beneficiaries will have limited ability to access their plan investments without incurring adverse tax consequences. Applicants will exclude self-directed plans from this category. The assets of the tax-exempt retirement plans in category (b) will be held in trust by a trustee, and the employees who participate in such plans will have limited pre-retirement access to their plan investments. The investors in categories (c), (d), and (e) will share with category (a) the essential features of substantial assets under management and investment decision-making by institutional management. Investors in the Direct Investor Classes will not be eligible to purchase shares of the Indirect Investor Classes.

10. Applicants propose to convert Class B shares, other than Class B shares acquired through the reinvestment of dividends and distributions, automatically to Class A shares a certain number of years after the end of the calendar month in which the shareholders' order to purchase was accepted. Shares purchased through the reinvestment of dividends and distributions will be considered held in a separate sub-account, and each time any Class B shares convert to Class A shares, a *pro rata* portion of the Class B shares purchased through the reinvestment of dividends or distributions also will convert. The purpose of the conversion feature is to relieve the holders of the Class B shares from continuing to pay a high ongoing distribution fee after the Class B shares have been outstanding long enough for the Distributor to have recouped its distribution expenses.

11. Shares of one class of a series generally may be exchanged for a corresponding class of another series belonging to the same "family of funds" (as defined in rule 11a–3). Each Trust is a separate family of funds. Exchanges will not be permitted between Direct

[2] The Kent Funds, *et al.*, Investment Company Act Release Nos. 19033 (Oct. 15, 1992) (notice) and 19094 (Nov. 12, 1992) (order). On February 15, 1994, The Kent Funds received no-action relief so that it can continue to rely on that order for an interim period of up to one year, if any, between the assumption by 440 Distributors of the role as The Kent Funds' distributor and the granting of an order pursuant the application.

[3] Investment Company Act Release Nos. 19236 (Jan. 26, 1993) (notice) and 19291 (Feb. 23, 1993) (order).

Investor Classes of shares and Indirect Investor Classes of shares.

12. Applicants seek exemptive relief to permit them to impose a CDSC on redemptions of shares of Classes B and C. In no event would the aggregate amount of the Class B CDSC exceed 6% of the aggregate purchase payments made by an investor for Class B shares of a series. The CDSC for the Class C shares of a series will not exceed 1% of the aggregate purchase payments. The CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase or redemption. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital gains distributions, and finally of other shares held by the shareholder for the longest period of time.

13. The Trusts intend to waive the CDSC in the event of one or more of the following occurrences: (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code or 1986, as amended (the "Code"), of a shareholder if redemption is made within one year of death or disability of a shareholder, as relevant; (b) in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keough Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59½ or, in connection with redemptions which result from a tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code or from the death or disability of the employee; (c) in connection with redemptions of shares purchased by officers, directors or trustees, and employees of the series, the Advisers and their affiliated entities the Distributors and their affiliated entities, and by the members of the immediate families of such persons; (d) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a series; (e) in connection with redemptions effected by advisory accounts managed by the Advisers and their affiliated entities; (f) in connection with redemptions by tax-exempt employee benefit plans as a result of the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the series would be improper; and (g) in connection with redemptions effected by a registered investment company in connection with the combination of the investment company with a series by merger, acquisition of assets, or by any other transaction. In addition, the Trusts intend to reduce the CDSC in connection with redemptions by large accountholders.

14. Each series may provide a *pro rata* credit for any CDSC paid in connection with a redemption of shares from a series followed by a reinvestment in the series effected within 365 days, or a shorter period, of the redemption. The credit will be paid for by the series' distributor.

Applicants' Legal Analysis

1. Applicants request an order exempting them from the provisions of sections 18(f)(1), 18(g), and 18(i) to the extent that the proposed issuance and sale of various classes of shares representing interests in the same Trust might be deemed: (a) to result in a "senior security" within the meaning of section 18(g); (b) prohibited by section 18(f)(1); and (c) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed multi-class arrangement will better enable the Trusts to meet the competitive demands of today's financial services industry. Under the multiclass arrangement, an investor will be able to choose the method of purchasing shares that is most beneficial given the amount of his or her purchase, the length of time the investor expects to hold his or her shares, and other relevant circumstances. The proposed arrangement would permit the Trusts to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

3. The proposed allocation of expenses and voting rights relating to the rule 12b–1 plans in the manner described is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflicts of interest because the rights and privileges of each class of shares are substantially identical.

4. Applicants believe that the proposed multi-class arrangement does not present the concerns that section 18 was designed to address. The multi-class arrangement will not increase the speculative character of the shares of the Trusts. The multi-class arrangement does not involve borrowing, nor will it affect the Trust's existing assets or reserves, and does not involve a complex capital structure. Nothing in the multi-class arrangement suggests that it will facilitate control by holders of any class of shares.

5. Applicants submit that the requested exemption to permit the Trusts to implement the proposed CDSCs is appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. The proposed CDSC arrangements will provide shareholders the option of having their full payment invested for them at the time of their purchase of shares of the Trusts with no deduction of an initial sales charge.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a series and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same series will relate solely to: (a) the method of financing certain expenses that may be imposed upon a particular class of shares and which are limited to (i) incremental transfer agent fees identified by the transfer agent as being attributable to a specific class of shares, (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class of shares, (iii) blue sky registration fees incurred by a class of shares, (iv) SEC registration fees incurred by a class of shares, (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class, (vi) litigation or other legal expenses relating solely to one class of shares, (vii) trustees' fees incurred as a result of issues relating to one class of shares, and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class of shares which shall be approved by the SEC pursuant to an amended order, (collectively, "Class Expenses"); (b) the impact of different rule 12b–1 plan (if any) or shareholder services plan (if any) payments made by a particular class of shares; (c) voting rights on matters which pertain to rule 12b–1 plans or shareholder services plans; (d) the conversion feature applicable to classes of shares sold subject to a CDSC which are convertible into a class of shares not subject to a CDSC; and (e) the designation of each class of shares of a series.

2. If a series implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or

implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by a class of shares under the plan into which another class will convert (the "Target Class"), existing shares of the class that will convert ("Purchase Class") will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 6 below, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Advisers and the Distributors. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

3. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

4. The trustees of each of the Trusts, including a majority of the independent trustees, shall have approved the Multiple Pricing System, prior to the implementation of the Multiple Pricing System by a particular series. The minutes of the meetings of the trustees regarding their deliberations with respect to the approvals necessary to implement the Multiple Pricing System will reflect in detail the reasons for determining that the Multiple Pricing System is in the best interest of both the series and their respective shareholders.

5. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a series and any subsequent changes thereto will be reviewed and approved by a vote of the trustees, including a majority of the independent trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a series to meet Class Expenses shall provide to the trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purpose for which such expenditures were made.

6. On an ongoing basis, the trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each series for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Advisers and the Distributors will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Advisers and the Distributors at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

7. The trustees will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale or servicing of a class of shares will be used to support any rule 12b–1 plan or shareholder services plan expenditures charged to such class. Expenditures not related to the sale or servicing of a specific class will not be presented to the trustees to support rule 12b–1 plan or shareholder services plan expenditures charged to shareholders of such class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

8. If any class will be subject to a shareholder services plan, such shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

9. Dividends paid by a series with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that expenditures associated with any rule 12b–1 plan or shareholder services plan and any Class Expense will be borne by the affected class.

10. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among such classes has been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants (and such report has been filed with the SEC as an exhibit to the application), stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and based upon such review, will render at least annually a report to the Trusts that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Experts with respect to such reports, following request by the Trusts (which the Trusts agree to make), will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, any Assistant Director, and any Regional Administrator or Associate and Assistant Administrator. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may

be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition 10 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 10 above. The applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

12. The prospectuses of the series relating to each class of shares will contain a statement to the effect that financial institutions, groups, and any other person entitled to receive any compensation for selling series shares may receive different levels of compensation for selling one particular class of shares over another in a series.

13. The series' Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares to agree to conform to these standards. Applicants' compliance standards will require the investors eligible to purchase an Indirect Investor Class of shares of a non-money series offering such shares to invest in the Indirect Investor Class of shares, rather than the Direct Investor Classes of shares of such non-money market series. Applicants' compliance standards will also require all investors eligible to purchase an Indirect Investor Class of shares of a money market series offering such shares, to invest in an Indirect Investor Class of shares of such money market series.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the Multiple Pricing System will be set forth in guidelines which will be furnished to the trustees.

15. Each Trust will disclose the respective expenses, performance data, distribution arrangements, service fees, initial sales loads, deferred sales loads, and exchange privilege applicable to each Director Investor Class of shares in every prospectus offering any Direct Investor Classes of shares. Each Trust will disclose the respective expenses, performance data, distribution arrangements, service fees, initial sales loads, deferred sales loads, and exchange privileges, if any, applicable to each Indirect Investor Class of shares in every prospectus offering Indirect Investor Classes of shares. The Indirect Investor Classes will be offered solely pursuant to separate prospectus(es). The prospectus(es) for the Indirect Investor Classes will disclose the existence of the Trust's Direct Investor Classes and will identify the entities eligible to purchase such shares, and the prospectuses for the Trust's Direct Investor Classes will disclose the existence of the Indirect Investor Classes and will identify the persons eligible to purchase shares of such classes. Each Trust will disclose the respective expenses and performance data applicable to all classes in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the trust as a whole generally, and not on a per class basis. Each Trust's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Trust. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any Direct Investor Class of shares, it will also disclose the expenses and/or performance data applicable to all Direct Investor Classes of shares. Advertising materials reflecting the expenses or performance data for the Indirect Investor Classes will be available only to Qualified Institutional Investors eligible to purchase such Indirect Investor Classes and to the extent any such advertisement or sales literature describes the expenses or performance data applicable to any one Indirect Investor Class of shares, it will also disclose the expenses or performance data applicable to all Indirect Investor Classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Trusts' asset values and public offering prices for Direct Investor Classes of shares will present each class of shares, except the Indirect Investor Classes, separately.

16. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Trust may make pursuant to a rule 12b–1 distribution plans or shareholder services plans in reliance on the exemptive order.

17. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5809 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1962]

Delegation of Authority 211; Authorization of Testimony and Production of Documents

By virtue of the authority vested in me by 22 CFR 172.4(b) and section 4 of the Act of May 26, 1949 (63 Stat. 111, 22 U.S.C. 2658), I hereby delegate to Principal Deputy Assistant Secretary for Consular Affairs the authority conferred on the Assistant Secretary for Consular Affairs pursuant to 22 CFR 172.4 and 172.5 concerning approval of testimony and production of documents by Department of State employees. This authority may be redelegated to another Deputy Assistant Secretary. Notwithstanding this delegation of authority, the Assistant Secretary for Consular Affairs may at any time exercise any authority conferred upon that officer by 22 CFR part 172.

Dated: January 31, 1994.

Mary A. Ryan,

Assistant Secretary of Consular Affairs.

[FR Doc. 94–5796 Filed 3–11–94; 8:45 am]

BILLING CODE 4710–06–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app., announcement is hereby published for the first meeting of the Affordable Housing Advisory Board. The meeting is open to the public. Less than 15 days notice is being given because Public Law 103–204 requires that the first meeting of the Affordable Housing Advisory Board take place no later than March 16, 1994.

DATES: The Affordable Housing Advisory Board meeting is scheduled

for Tuesday, March 15, 1994, from 9 to 12 p.m.

ADDRESSES: The meeting will be held at the Washington Vista Hotel, Monticello Room, 1400 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 14(b) of the Resolution Trust Corporation Completion Act, Public Law 103–204, establishes the Affordable Housing Advisory Board to advise the Thrift Depositor Protection Oversight Board (Oversight Board) and the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) on policies and programs related to the provision of affordable housing. The Advisory Board consists of the Secretary of Housing and Urban Development (HUD), the Chairperson of the Board of Directors of the FDIC (or delegate), a nonvoting member, the Chairperson of the Oversight Board (or delegate), a nonvoting member, four persons appointed by the Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two members of the Affordable Housing Advisory Board appointed by such Board. The Affordable Housing Advisory Board was chartered March 10, 1994, and Public Law No. 103–204 requires that its first meeting take place not later than March 16, 1994.

Agenda

A detailed agenda will be available at the meeting. Discussions will include a review of RTC's and FDIC's Affordable Housing Disposition Programs and their unification plan, sale of non-performing loans to nonprofits and public agencies, and the affordable housing provisions of the Resolution Trust Completion Act.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: March 10, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94–5933 Filed 3–10–94; 9:46 am]

BILLING CODE 2222–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 791 Ref: ATF O 1100.63F]

Delegation Order—Delegation or Authority to Accept or Reject Offers in Compromise

1. *Purpose.* This order delegates the authority to accept or reject certain offers in compromise of liabilities incurred under chapters 32, 51, 52, 53, and 78, Title 26 U.S.C., and liabilities incurred under the Federal Alcohol Administration (FAA) Act.

2. *Cancellation.* ATF O 1100.63E, Delegation to the Associate Director (Compliance Operations), Division Chiefs (Compliance), Regional Directors (Compliance) and Chief, Tax Processing Center to Accept or Reject Offers in Compromise, dated April 7, 1992, is canceled.

3. *General.* a. The authority to accept or reject offers in compromise of liabilities arising under chapters 32, 51, 52, and 53, and sections 7652 and 7653 (chapter 78), Title 26 U.S.C., and the provisions of the FAA Act is vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly Order No. 221), dated June 6, 1972; Treasury Department Order No. 120–03, dated November 5, 1990; and 27 CFR 70.482 and 70.483.

b. The term tax liability used throughout this document includes all principal, interest, additional amounts, addition to the tax, or assessable penalties.

4. *Discussion.* This order authorizes regional directors (compliance) and the Chief, Tax Processing Center, to take final action on selected offers in compromise previously requiring action by the division chiefs (compliance). This order also gives the Chief, Tax Processing Center authority to resolve certain cases involving permittees when these cases are in enforced collection status.

5. *Delegations.* Pursuant to the authority vested in the Director by Treasury Department Orders No. 120–01 and 120–03, and subject to the limitations contained in applicable regulations and procedures, there is hereby delegated the following authority relating to the offers in compromise of liabilities (other than forfeiture) arising under chapters 32, 51, 52, 53, and 78, Title 26 U.S.C., and under the FAA Act.

a. *Associate Director and Deputy Associate Director (Compliance Operations).* (1) The Associate Director and Deputy Associate Director (Compliance Operations) are authorized to accept or reject offers in compromise of all liabilities arising from:

(a) Violations of chapters 32, 51, 52 and 53, Title 26 U.S.C.

(b) Violations of sections 7652 and 7653 (chapter 78), Title 26 U.S.C., insofar as those sections relate to commodities subject to tax under chapters 32, 51, 52, and 53.

(c) Violations of the FAA Act.

(d) Cases which combine liabilities arising from violations of chapter 51, Title 26 U.S.C. and the FAA Act.

(2) This delegation is limited to offers in compromise which do not exceed $1,000,000.

b. *Division Chiefs (Compliance).* (1) Each division chief (compliance) is authorized to accept or reject offers in compromise of all liabilities arising from:

(a) Violations of chapters 32, 51, 52, and 53 and §§ 7652 and 7653 (chapter 78), Title 26 U.S.C. as follows:

1 Cases in which the offer in compromise does not exceed $100,000 and the tax liability sought to be compromised does not exceed $250,000.

2 Cases of late filed tax returns or late paid excise tax where the penalties sought to be compromised do not exceed $500,000 and the offer in compromise does not exceed $100,000.

(b) Violations of the FAA Act where cases include an offer in compromise which does not exceed $100,000.

(c) Cases that combine liabilities arising under chapter 51, Title 26 U.S.C. and the FAA Act where the tax liability sought to be compromised does not exceed $250,000 and the offer in compromise does not exceed $100,000.

(2) The division chief (compliance) in whose area of responsibility the majority of violations pertains will be the deciding official to accept or reject offers which compromise the liabilities, including those cases which are designated as national investigations/cases by Bureau Headquarters.

c. *Regional Directors (Compliance).* (1) Each regional director (compliance) is authorized to accept or reject offers in compromise of tax liabilities and penalties arising from:

(a) Chapter 51, Title 26 U.S.C., as follows:

1 Illegal production of untaxpaid distilled spirits, wines, or beer.

2 Failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, or beer.

(b) Chapter 53, Title 26 U.S.C. (failure to pay firearms making, transfer, and occupational taxes).

(2) Each regional director (compliance) is authorized to accept or reject offers in compromise of criminal

liabilities of retail dealers in alcoholic beverages arising from violations of the Internal Revenue laws relating to alcoholic beverages, including the refilling or reuse of liquor bottles.

(3) Each regional director (compliance) is authorized to accept or reject offers in compromise of all liabilities arising from:

(a) Violations of chapters 32, 51, 52, and 53, and §§ 7652 and 7653 (chapter 78), Title 26 U.S.C., not enumerated in paragraphs 5c(1) and (2), as follows:

1 Cases in which the offer in compromise does not exceed $10,000 and the tax liability sought to be compromised does not exceed $20,000.

2 Cases of late filed tax returns or late paid excise tax where the penalties sought to be compromised do not exceed $50,000 and the offer in compromise does not exceed $10,000.

3 Cases that pertain to specially denatured alcohol (SDA) or taxfree (TF) alcohol where the offer in compromise does not exceed $10,000 and the tax liability sought to be compromised is based upon either (a) use of SDA or TF alcohol for unauthorized purposes or (b) activities to which no liability would normally attach if the proponent completed required notification and/or approval procedures, but for which the proponent failed to complete such procedures. This delegation is limited to cases in which the misuse of SDA or TF alcohol or the activities in question are:

a Not willful, and

b Not for beverage purposes, and

c Not for a purpose that poses a health risk to the public, and

d Not for any purpose that poses a jeopardy to the revenue.

(b) Violations of the FAA Act where cases include an offer in compromise which does not exceed $10,000.

(c) Cases that combine liabilities arising under chapter 51, Title 26 U.S.C., and the FAA Act where the tax liability sought to be compromised does not exceed $20,000 and the offer in compromise does not exceed $10,000.

(4) Each regional director is authorized to accept or reject offers in compromise arising from cases outlined in paragraph 5b provided the following circumstances apply:

(a) The final action to be taken follows specific written case resolution guidance previously furnished by the division chief (compliance).

(b) The relevant circumstances of the case have not changed subsequent to the guidance of the division chief (compliance).

(5) *Offers Encompassing Violations in Multiple Regions.* (a) The regional director (compliance) in whose region the permittee or brewer responsible for the majority of violations is located will be the deciding official for offers involving violations or permittees in more than one region. However, cases that include a previously issued order to show cause will be resolved by the regional director who authorized issuance of the order.

(b) Tax cases regarding members of controlled groups as defined in 26 U.S.C. 1563(a) will generally be resolved by the regional director (compliance) in whose region the members are located. However, if multiple liabilities for the same tax period(s) have occurred as a result of preparation of late filed tax returns or late paid tax handled by a central location, the penalties will be resolved by the regional director (compliance) in whose region lies the central location.

(c) This authority does not include:

1 Cases which are designated as national investigations/cases by Bureau Headquarters, or

2 Cases where the total amount of such a liability exceeds the levels delegated to regional director (compliance).

d. *Chief, Tax Processing Center.* The Chief, Tax Processing Center is authorized to accept or reject offers in compromise of all tax liabilities arising from violations of chapters 32, 51, 52, and 53, and §§ 7652 and 7653 (chapter 78), Title 26 U.S.C., in the following situations:

(1) Floor stocks tax and special (occupational) tax cases in which the offer in compromise does not exceed $5,000 and the tax liability sought to be compromised does not exceed $10,000. This authority does not include offers in compromise from alcohol and tobacco permittees except for those permittee cases included in paragraph 5d(2). Decisions regarding special (occupational) taxes imposed by 26 U.S.C. chapter 53 will be coordinated with the Chief, National Firearms Act Branch.

(2) Enforced Collection cases in which the offer in compromise does not exceed $5,000 and the tax liability sought to be compromised does not exceed $10,000. Cases in excess of these amounts will be referred to Bureau Headquarters for evaluation.

(3) Floor stocks tax, special (occupational) tax, and enforced collection cases which meet the criteria outlined in paragraph 5b(1)(a), provided the following circumstances apply:

(a) The final action to be taken follows specific written case resolution guidance previously furnished by the division chief (compliance).

(b) The relevant circumstances of the case have not changed subsequent to the guidance of the division chief (compliance).

6. *Redelegation.* The authority delegated herein may not be redelegated.

7. *For Information Contact.* Gary Malaskovitz, Tax Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

8. *Effective Date.* March 14, 1994.

Approved: March 7, 1994.

John W. Magaw,

Director.

[FR Doc. 94–5803 Filed 3–11–94; 8:45 am]

BILLING CODE 4810–31–U

Internal Revenue Service

Tax on Certain Imported Substances; Notice of Determination; Bisphenol-A, Etc.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include bisphenol-A and alpha-methylstyrene.

EFFECTIVE DATE: This modification is effective July 1, 1990.

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:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On March 5, 1990, the Secretary determined that bisphenol-A and alpha-methylstyrene should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective July 1, 1990.

The rate of tax prescribed for bisphenol-A, under section 4671(b)(3), is $5.11 per ton. This is based upon a conversion factor for benzene of 0.68 and a conversion factor for propylene of 0.37.

The rate of tax prescribed for alpha-methylstyrene, under section 4671(b)(3), is $4.96 per ton. This is based upon a conversion factor for benzene of 0.66 and a conversion factor for propylene of 0.36.

The petitioner is Aristech Chemical Corporation, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Bisphenol-A

HTS number: 2907.23.00.00
CAS number: 80–05–7

Bisphenol-A is derived from the taxable chemicals benzene and propylene. Bisphenol-A is a solid produced predominantly by the acid catalyzed reaction of phenol with acetone.

The stoichiometric material consumption formula for bisphenol-A is:

$2\ C_6H_6$ (benzene) + $2\ C_3H_6$ (propylene) + $2\ O_1$ (oxygen) ——> $C_{15}H_{16}O_2$ (bisphenol-A) + C_3H_6O (acetone) + H_2O (water)

Bisphenol-A has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 78.9 percent by weight of the materials used in its production.

Alpha-methylstyrene

HTS number: 2902.90.00.00
CAS number: 98–83–9

Alpha-methylstyrene is derived from the taxable chemicals benzene and propylene. Alpha-methylstyrene is a liquid produced predominantly as a byproduct from the cumene oxidation process for the production of phenol-acetone. The stoichiometric material consumption formula for alpha-methylstyrene is:

C_6H_6 (benzene) + C_3H_6 (propylene) + 0.5 O2 (oxygen) ——> C_9H_{10} (alpha-methylstyrene) + H_2O (water)

Alpha-methylstyrene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 88.2 percent by weight of the materials used in its production.

Dale D. Goode

Federal Register Liaison Officer Assistant Chief Counsel (Corporate).

[FR Doc. 94–5861 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Notice of Determination; Decabromodiphenyl Oxide, Etc.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under notice 89–61, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include decabromodiphenyl oxide and tetrabromobisphenol-A.

EFFECTIVE DATE: This modification is effective July 1, 1990.

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:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On July 9, 1991, the Secretary determined that decabromodiphenyl oxide and tetrabromobisphenol-A should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective July 1, 1990.

The rate of tax prescribed for decabromodiphenyl oxide, under section 4671(b)(3), is $7.41 per ton. This is based upon a conversion factor for bromine of 1.666.

The rate of tax prescribed for tetrabromobisphenol-A, under section 4671(b)(3), is $5.22 per ton. This is based upon a conversion factor for bromine of 1.175.

The petitioner is Ethyl Corporation, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Decabromodiphenyl oxide

HTS number: 2909.30.07
CAS number: 1163–19–5

Decabromodiphenyl oxide is derived from the taxable chemical bromine. Decabromodiphenyl oxide is a solid produced predominantly by direct bromination of diphenyl oxide in the presence of a catalyst.

The stoichiometric material consumption formula for decabromodiphenyl oxide is:

$C_{12}OH_{10}$ (diphenyl oxide) + 10 Br_2 (bromine) ——> $C_{12}OBr_{10}$ (decabromodiphenyl oxide) + 10 HBr (hydrogen bromide).

Decabromodiphenyl oxide has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 90.3 percent by weight of the materials used in its production.

Tetrabromobisphenol-A

HTS number: 2908.10.25
CAS number: 79–94–7

Tetrabromobisphenol-A is derived from the taxable chemical bromine. Tetrabromobisphenol-A is a solid produced predominantly by the reaction of bromine with bisphenol-A.

The stoichiometric material consumption formula for tetrabromobisphenol-A is:

$C_{15}H_{16}O_2$ (bisphenol-A) + 4 Br_2 (bromine) ——> $C_{15}H_{12}O_2Br_4$ (tetrabromobisphenol-A) + 4 HBr (hydrogen bromide).

Tetrabromobisphenol-A has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 73.7 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5859 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition; Di-n-hexyl Adipate, Etc.

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 di-n-hexyl adipate, ortho-dichlorobenzene and para-dichlorobenzene 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 May 13, 1994. Any modification of the list of taxable substances based upon these petitions 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 petitions were received on December 27, 1989. The petitioner is Monsanto Company, 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.

Di-n-hexyl adipate

HTS number: 2917.39.20.00
CAS number: 110–33–8

This substance is derived from the taxable chemicals ethylene, methane, benzene, and nitric acid. Di-n-hexyl adipate is a liquid produced predominantly by reaction of n-hexyl alcohol with adipic acid in the presence of a catalyst. n-hexyl alcohol is produced from aluminum, natural gas (via hydrogen), and ethylene (via triethylaluminum). Oxidation of the intermediate mixed trialkylaluminum with air produces a mixed aluminum alkoxide, which is hydrolyzed to produce a mixture of alcohols, from which n-hexyl alcohol is recovered by distillation. Adipic acid is produced from benzene (via cyclohexane) and the methane in natural gas (via hydrogen). Oxidation of cyclohexane using air and nitric acid in a two-step process produces adipic acid.

The stoichiometric material consumption formula for this substance is:

$6\ C_2H_4$ (ethylene) + $1.5\ CH_4$ (methane) + C_6H_6 (benzene) + $2.33\ HNO_3$ (nitric acid) + $2.83\ H_2O$ (water) + $1.75\ O_2$ (oxygen) + 0.67 Al (aluminum) + $2.02\ H_2$ (hydrogen) ——> $C_{18}H_{34}O_4$ (di-n-hexyl adipate) + $3\ H_2$ (hydrogen) + $1.5\ CO_2$ (carbon dioxide) + 2.33 NO (nitric oxide) + $2\ H_2O$ (water) + $0.67\ AlH_3O_3$ (aluminum hydroxide)

According to the petition, taxable chemicals constitute 76.6 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.67 per ton. This is based upon a conversion factor for ethylene of 0.58, a conversion factor for methane of 0.05, a conversion factor for benzene of 0.33, and a conversion factor for nitric acid of 0.29.

Ortho-dichlorobenzene

HTS number: 2903.61.20.00
CAS number: 95–50–1

This substance is derived from the taxable chemicals benzene and chlorine. Ortho-dichlorobenzene is a liquid produced predominantly by the reaction of chlorine with benzene.

The stoichiometric material consumption formula for this substance is:

C_6H_6 (benzene) + 2 Cl2 (chlorine) ——> $C_6H_4Cl_2$ (o-dichlorobenzene) + 2 HCl (hydrogen chloride)

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 $5.55 per ton. This is based upon a conversion factor for benzene of 0.57 and a conversion factor for chlorine of 1.03.

Para-dichlorobenzene

HTS number: 2903.61.30.00
CAS number: 106–46–7

This substance is derived from the taxable chemicals benzene and chlorine. Para-dichlorobenzene is a solid produced predominantly by the reaction of chlorine with benzene.

The stoichiometric material consumption formula for this substance is:

C_6H_6 (benzene) + $2\ Cl_2$ (chlorine) ——> $C_6CH_4Cl_2$(p-dichlorobenzene) + 2 HCl (hydrogen chloride)

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 $5.55 per ton. This is based upon a conversion factor for benzene of 0.57 and a conversion factor for chlorine of 1.03.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5863 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition; Epichlorohydrin, Etc.

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 epichlorohydrin and allyl chloride 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 May 13, 1994. Any modification of the list of taxable substances based upon this petition would be effective October 1, 1992.

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 November 21, 1991 (epichlorohydrin) and December 6, 1991 (allyl chloride). The petitioner is Dow Chemical Company 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.

Epichlorohydrin

HTS number: 2910.30.00.00
CAS number: 106–89–8

This substance is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide. Epichlorohydrin

is a liquid produced predominantly by the chlorohydration of allyl chloride, which is obtained by chlorination of propylene, followed by the hydrochlorination of the formed dichlorohydrin.

The stoichiometric material consumption formula for this substance is:

C_3H_6 (propylene) + 2 Cl_2 (chlorine) + NaOH (sodium hydroxide)——> C_3H_5ClO (epichlorohydrin)+2 HCl (hydrogen chloride) + NaCl (sodium chloride)

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 $8.58 per ton. This is based upon a conversion factor for propylene of 0.61, a conversion factor for chlorine of 1.98, and a conversion factor for sodium hydroxide of 0.96.

Allyl chloride

HTS number: 2903.29.00.00
CAS number: 107–05–1

This substance is derived from the taxable chemicals propylene and chlorine. Allyl chloride is a liquid produced predominantly by noncatalytic flow-pressure, high temperature chlorination of propylene.

The stoichiometric material consumption formula for this substance is:

C_3H_6 (propylene) + Cl_2 (chlorine) ——> C_3H_5Cl (allyl chloride) + HCl (hydrogen chloride)

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 $6.45 per ton. This is based upon a conversion factor for propylene of 0.66 and a conversion factor for chlorine of 1.20.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5862 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition; Glycerine, Etc.

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 glycerine and phenol 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 May 13, 1994. Any modification of the list of taxable substances based upon this petition 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 petition for glycerine was received on February 21, 1990, and the petition for phenol was received on March 6, 1990. The petitioner is Dow Chemical Company, 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.

Glycerine

HTS number: 1520.90.00.00
CAS number: 56–81–5

This substance is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide. Glycerine is a liquid produced predominantly by the reaction of epichlorohydrin with an aqueous caustic carbonate solution, followed by the removal of water, sodium chloride, and other impurities by mechanical means, chemical extraction, and distillation.

The stoichiometric material consumption formula for this substance is:

C_3H_6 (propylene) + 2 Cl_2 (chlorine) + 2 NaOH (sodium hydroxide) + H_2O (water) ——> $C_3H_8O_3$ (glycerine) + 2 NaCl (sodium chloride) + 2 HCl (hydrogen chloride).

According to the petition, taxable chemicals constitute 93.5 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $9.52 per ton. This is based upon a conversion factor for propylene of 0.67, a conversion factor for chlorine of 2.16, and a conversion factor for sodium hydroxide of 1.54.

Phenol

HTS number: 2907.11.00.00
CAS number: 108–95–2

This substance is derived from the taxable chemicals benzene and propylene. Phenol is a solid produced predominantly based on cumene peroxidation.

The stoichiometric material consumption formula for this substance is:

C_6H_6 (benzene) + C_3H_6 (propylene) + O_2 (oxygen) ——> C_6H_6O (phenol) + C_3H_6O (acetone)

According to the petition, taxable chemicals constitute 78.9 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $6.33 per ton. This is based upon a conversion factor for benzene of 0.9 and a conversion factor for propylene of 0.4.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5857 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition; Para-nitrophenol, Etc.

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 para-nitrophenol, ortho-nitrochlorobenzene, and para-nitrochlorobenzene 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 May 13, 1994. 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 29, 1989. The petitioner is Monsanto

Company, 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.

Para-nitrophenol

HTS number: 2908.90.04.00
CAS number: 100–02–7

This substance is derived from the taxable chemicals chlorine, benzene, sodium hydroxide, nitric acid, and sulfuric acid. Para-nitrophenol is a solid produced predominantly by the reaction of para-nitrochlorobenzene with aqueous sodium hydroxide, followed by reaction with sulfuric acid to form para-nitrophenol from the resulting para-nitrophenoxide.

The stoichiometric material consumption formula for this substance is:

Cl_2 (chlorine) + C_6H_6 (benzene) + 2 NaOH (sodium hydroxide) + HNO_3 (nitric acid) + 0.5 H_2SO_4 (sulfuric acid) ——> $C_6H_5NO_3$ (p-nitrophenol) + NaCl (sodium chloride) + 2 H_2O (water) + 0.5 Na_2SO_4 (sodium sulfate) + HCl (hydrogen chloride)

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 $4.85 per ton. This is based upon a conversion factor for chlorine of 0.54, a conversion factor for benzene of 0.60, a conversion factor for sodium hydroxide of 0.75, a conversion factor for nitric acid of 0.47, and a conversion factor for sulfuric acid of 0.59.

Ortho-nitrochlorobenzene

HTS number: 2903.69.00.00
CAS number: 88–73–3

This substance is derived from the taxable chemicals chlorine, benzene, and nitric acid. Ortho-nitrochlorobenzene is a solid produced predominantly by the nitration of monochlorobenzene.

The stoichiometric material consumption formula for this substance is:

Cl_2 (chlorine) + C_6H_6 (benzene) + HNO_3 (nitric acid) ——> $C_6H_4ClNO_2$ (o-nitrochlorobenzene) + H_2O (water) + HCl (hydrogen chloride)

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 $3.89 per ton. This is based upon a conversion factor for chlorine of 0.47, a conversion factor for benzene of 0.52, and a conversion factor for nitric acid of 0.41.

Para-nitrochlorobenzene

HTS number: 2903.69.00.00
CAS number: 100–00–5

This substance is derived from the taxable chemicals chlorine, benzene, and nitric acid. Para-nitrochlorobenzene is a solid produced predominantly by the nitration of monochlorobenzene.

The stoichiometric material consumption formula for this substance is:

Cl_2 (chlorine) + C_6H_6 (benzene) + HNO_3 (nitric acid) ——> $C_6H_4ClNO_2$ (p-nitrochlorobenzene) + H_2O (water) + HCl (hydrogenchloride)

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 $3.89 per ton. This is based upon a conversion factor for chlorine of 0.47, a conversion factor for benzene of 0.52, and a conversion factor for nitric acid of 0.41.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5858 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Notice of Determination; Perchloroethylene

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include perchloroethylene.

EFFECTIVE DATE: This modification is effective July 1, 1990.

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:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On March 5, 1990, the Secretary determined that perchloroethylene should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective July 1, 1990.

The rate of tax prescribed for perchloroethylene under section 4671(b)(3), is $5.44 per ton. This is based upon a conversion factor for ethylene of 0.17 and a conversion factor for chlorine of 1.71.

The petitioner is Vulcan Chemicals, a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination.

Perchloroethylene

HTS number: 2903.23.00.00
CAS number: 127–18–4

Perchloroethylene is derived from the taxable chemicals ethylene and chlorine. Perchloroethylene is a liquid produced predominantly by the high temperature chlorination of ethylene.

The stoichiometric material consumption formula for perchloroethylene is:

C_2H_4 (ethylene)+4 Cl_2 (chlorine) ——> C_2Cl_4 (perchloroethylene)+4 HCl (hydrogen chloride)

Perchloroethylene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5860 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Addendum

On September 14, 1993, notice was published at page 48089 of the **Federal Register** (58 FR 48089) by the United States Information Agency pursuant to

Public Law 89–259 relating to the exhibit "The Age of the Baroque in Portugal." This exhibit will continue to be presented at the National Gallery of Art, Washington, DC until on or about April 3, 1994. In addition to this venue, the exhibit will also be on display at the San Diego Museum of Art, San Diego, California from on or about May 12, 1994, to on or about August 7, 1994. A copy of the list of objects covered by this notice may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619–5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Les Jin,

General Counsel.

[FR Doc. 94–5812 Filed 3–11–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 49
Monday, March 14, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 2 p.m., Wednesday, March 23, 1994.

PLACE: SR–236, Russell Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Report on financial status of the Foundation fund
   A. Review of investment policy and current portfolio
1. Report on results of Scholarship Review Panel
   A. Discussion and consideration of scholarship candidates
   B. Selection of Goldwater Scholars

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (202) 755–2312.

Gerald J. Smith,

Executive Secretary.

[FR Doc. 94–5967 Filed 3–10–94; 11:31 am]

BILLING CODE 4738–91–M

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2 p.m., March 22 1994.

PLACE: Room 104–A Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Special Open Meeting of November 30, 1992.
2. Memorandum re: Update of CCC–Owned Inventory.
3. Memorandum re: CCC Financial Condition Report.
4. Docket ZCP–72b re: Program to Supply Cotton to Textile Schools for 1994 and Subsequent Years.
5. Docket JCZ–328 re: Emergency Livestock Feed Assistance Programs for 1994 and Subsequent Years.
6. Docket CZ–128a, Revision 1 re: Policy With Respect to Notifying Persons of Claims Against the Commodity Credit Corporation.
7. Docket CZ–189, Revision 3 re: Policy Covering Payment of Claims Against Commodity Credit Corporation Which Are Due But Are Beyond Legal Action Due to a Statute of Limitations.
8. Memorandum re: Informational Memorandum of CCC Stocks Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for Fiscal Year 1993 Amendments and in Fiscal Year 1994 and Amendment.
9. Resolution for Docket CZ–266, Resolution No. 30, Amendment 1, re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1993.
10. Resolution for Docket CZ–266, Resolution No. 31 re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1994.
11. Docket CZ–332 re: Food for Progress Program.

CONTACT PERSON FOR MORE INFORMATION: Deborah A. Dawson, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, D.C. 20013; telephone (202) 690–0490.

Dated: March 10, 1994.

Deborah A. Dawson,

Secretary, Commodity Credit Corporation.

[FR Doc. 94–6022 Filed 3–10–94; 3:57 pm]

BILLING CODE 3410–05–M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), U.S.C. 552b:

DATE AND TIME: March 16, 1994, 10 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 996th Meeting—March 16, 1994, Regular Meeting (10 a.m.)

CAH–1.
  Project No. 2440–005, Northern States Power Company
CAH–2.
  Project No. 3083–060, Oklahoma Municipal Power Authority
CAH–3.
  Project No. 7396–030, The Incorporated County Of Los Alamos, New Mexico
CAH–4.
  Project No. 2536–012, Niagara of Wisconsin Paper Corporation
CAH–5.
  Project No. 11409–001, North Side Canal Company
CAH–6.
  Project No. 5192–003, Lind And Associates
CAH–7.
  Project No. 8910–018, Ten Sleep Hydropower, Inc.
CAH–8.
  Omitted
CAH–9.
  Project No. 11038–000, The County of Arapahoe and Town of Parker, Colorado
CAH–10.
  Project No. 5772–004, City of Augusta, Georgia

Consent Agenda—Electric

CAE–1.
  Docket Nos. ER93–299–000, EL93–18–000, ER92–436–000 and EL92–29–000, Florida Power Corporation
CAE–2.
  Docket Nos. ER90–283–003, ER90–283–005 and ER90–283–006, Cambridge Electric Light Company
CAE–3.
  Docket Nos. ER92–809–000 and 002, Illinois Power Company
CAE–4.
  Docket No. TX94–1–002, Minnesota Municipal Power Agency v. Northern States Power Company
CAE–5.
  Omitted
CAE–6.
  Docket No. ER92–517–002, Southern Company Services, Inc.
CAE–7.
  Docket Nos. ER93–150–003 and EL93–10–003, Boston Edison Company
CAE–8.
  Docket No. ER93–266–001, Boston Edison Company
CAE–9.
  Docket No. EG94–22–000, Inversores de Electricidad, S.A.
CAE–10.
  Docket No. EG94–23–000, SEI Inversora, S.A.
CAE–11.
  Docket No. EG94–19–000, COE Argentina I Corp.
CAE–12.
  Docket No. EG94–17–000, 2322133 Nova Scotia Limited
CAE–13.
  Docket No. EG94–15–000, 2322117 Nova Scotia Limited
CAE–14.
  Docket No. EG94–20–000, SEI Holdings VI, Inc.
CAE–15.
  Docket No. EG94–21–000, SEI Bahamas Argentina I, Inc.
CAE–16.
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CAE–17.

Omitted
CAE–18.
Docket No. QF93–131–001, UNIGAS Corporation
CAE–19.
Docket No. RM93–10–002, New Reporting Requirement Implementing Section 213 (b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC–714
CAE–20.
Docket No. EL89–44–002, Cajun Electric Power Cooperative, Inc. v. Gulf System Utilities Company
CAE–21.
Docket No. ER90–144–010 Northeast Utilities Service Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP94–135–000, Texas Eastern Transmission Corporation
CAG–2.
Docket No. RP94–73–002, ANR Pipeline Company
CAG–3.
Omitted
CAG–4.
Docket No. RP94–136–000, Northern Pipeline Corporation
CAG–5.
Docket No. RP94–133–000, Southern Natural Gas Company
CAG–6.
Docket Nos. RP93–172–000 and RP93–172–001, Panhandle Eastern Pipe Line Company
CAG–7.
Docket No. RP94–103–001, Williston Basin Interstate Pipeline Company
CAG–8.
Docket No. RP88–67–070, Texas Eastern Transmission Corporation
CAG–9.
Docket No. RP93–165–001, OkTex Pipeline Company
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Docket No. RP94–43–000, ANR Pipeline Company
CAG–11.
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CAG–12.
Docket No. RP94–93–001, K N Interstate Gas Transmission Company
CAG–13.
Docket No. RP94–139–000, Williston Basin Interstate Pipeline Company
CAG–14.
Docket No. RP93–189–000, Texas Gas Transmission Corporation
CAG–15.
Docket No. RP94–113–000, Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company
CAG–16.
Docket No. PR94–1–000, Bay Gas Storage Company, Ltd.
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Docket No. RP85–170–011, Texas Eastern Transmission Corporation
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Docket No. RP85–181–007, Texas Gas Transmission Corporation
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Docket No. RP85–202–013, Trunkline Gas Company
Docket Nos. RP93–127–001, RP93–127–004 and RP93–102–005, Columbia Gas Transmission Corporation
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Docket No. IS94–4–002, All American Pipeline Company
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Docket Nos. TM90–3–42–007, RP90–49–004, CP88–99–015, TM90–5–42–004, RP86–126–008 and RP90–43–003, Transwestern Pipeline Company
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CAG–28.
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Docket Nos. RP94–35–002 and RP94–35–003, Colorado Interstate Gas Company
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Docket No. CP93–69–003, Petal Gas Storage Company
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Docket No. CP93–507–000, Sonat Marketing Company
CAG–41.
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CAG–42.
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CAG–43.
Docket No. CP94–23–000, Ozark Gas Transmission System
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Docket Nos. CP89–362–004 and CP89–363–004, North Country Gas Pipeline Corporation
CAG–45.
Docket No. CP94–208–000, Questar Pipeline Company
CAG–46.
Docket No. CP93–425–001, CNG Transmission Corporation
CAG–47.
Omitted
CAG–48.
Docket No. CP94–36–000, Arkla Gathering Services Company
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H–1.
Project No. 2376–001, Appalachian Power Company. Order on application for new license.

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Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Restructuring Matters

RS–1.
Docket Nos. RS92–10–006, RS92–10–007, RS92–10–008, RP92–134–007, RP93–15–005 and CP71–237–005, Southern Natural Gas Company. Order on compliance and rehearing.
RS–2.
Docket Nos. RS92–75–009, RS92–75–010 and RS92–75–011, Paiute Pipeline Company. Order on compliance and rehearing.
RS–3.
Docket Nos. RS92–64–009 and RS92–64–010, High Island Offshore System.
Docket Nos. RS92–88–011 and 012, U-T Offshore System. Order on compliance and rehearing.
RS–4.
Docket Nos. RS92–12–008, RS92–12–009, RP89–183–054, RP91–152–027, RP93–171–001, TC89–8–010 and TM91–3–43–010, Williams Natural Gas Company. Order on compliance and rehearing.
RS–5.
Docket Nos. RS92–5–012, RS92–5–013, RS92–5–014, RS92–5–016, RP90–108–023, RP90–108–024, RP91–82–014, RS91–82–015, RP91–161–019, RP91–161–020, RS92–3–010, RS92–3–011,

RP93–66–003, RP93–66–004, RP93–115–003 and RP93–115–004, Columbia Gas Transmission Corporation

Docket Nos. RS92–6–011, RS92–6–012, RS92–6–013, RS92–6–014, RP90–107–020, RP90–107–021, RP91–60–016, RP91–60–017, RP92–2–010, RP92–2–011, CP93–736–002 and CP93–736–003. Columbia Gulf Transmission Company. Order on compliance and rehearing.

RS–6.

Docket Nos. RS92–86–016, RP92–108–012 and RP92–137–022, Transcontinental Gas Pipe Line Corporation. Order on compliance and rehearing.

RS–7.

Docket No. RS92–23–018, RS92–23–019, RP91–203–040 and RP92–132–037, Tennessee Gas Pipeline Company. Order on compliance and rehearing.

III. Pipeline Certificate Matters

PC–1.

Reserved

Dated: March 9, 1994.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5966 Filed 3–10–94; 11:30 am]

BILLING CODE 6717–01–P

UNITED STATES ENRICHMENT CORPORATION

Board of Directors

TIME AND DATE: 10 a.m., Tuesday, March 22, 1994.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: Parts of this meeting will be open to the public. The balance of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

- Administering Oaths of Office
- Establishment of Board committees

Portions Closed to the Public

- Consideration of internal personnel issues of the Corporation
- Consideration of, and action on, decisions and actions taken by the Transition Manager
- Consideration of commercial and financial issues of the Corporation

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

SUPPLEMENTAL INFORMATION: Anyone requiring special accommodations should advise the contact person above at least 48 hours prior to the meeting.

William H. Timbers, Jr.,

Transition Manager.

[FR Doc. 94–5987 Filed 3–10–94; 1:43 pm]

BILLING CODE 8720–01–M

Corrections

Federal Register
Vol. 59, No. 49
Monday, March 14, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[CC Docket No. 92-297]

Domestic Public Fixed Radio Services; Local Multipoint Distribution Service

Correction

In proposed rule document 94-3772 beginning on page 7961 in the issue of Thursday, February 17, 1994, make the following correction:

On page 7963, in the third column, in the next to last paragraph, in the seventh line, "March 18, 1994." should read "March 21, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-033A]

RIN 0905-AA06

Oral Health Care Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for Oral Antiseptic Drug Products

Correction

In proposed rule document 94-2262 beginning on page 6084, in the issue of Wednesday, February 9, 1994, make the following corrections:

1. On page 6084, in the first column, in the **DATES:**, in the last line, "August 8, 1994" should read "June 8, 1994".

2. On page 6121, in the first column in the second full paragraph, in the 12th line, "August 8, 1994", should read "June 8, 1994".

3. On the same page, in the same column, in the last paragraph, beginning in the fourth line, "(insert date 14 months after date of publication in the **Federal Register**)." should read "April 10, 1995".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-406A-02]

Area Closures to ORV/Motorized Vehicles

Correction

In notice document 94-4418 beginning on page 9493, in the issue of Monday, February 28, 1994, make the following corrections:

1. On page 9493, in the second column, in the land description, in the first line, "T. 9 S., R. 20 E.," should read "T. 9 S., R. 29 E.,"and in the fourth line, "Section 2: SE¼, SE¼, SW¼, SE¼," should read "Section 2: SE¼ SE¼, SW¼ SE¼".

2. On the same page, in the same column, in the sixth line, "Section 20: SE¼, SE¼, SW¼, SE¼", should read "Section 20: SE¼SE¼, SW¼SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-4210-05-03; AZA 28016]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

Correction

In notice document 94-3126 appearing on page 6288 in the issue of Thursday, February 10, 1994, in the second column, in the land description, under the heading **Gila and Salt**,, Sec. 30 should read "E½NE¼."

BILLING CODE 1505-01-D

federal register

Monday
March 14, 1994

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Harvest Information Program; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AC37

Migratory Bird Harvest Information Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) herein proposes to amend the Migratory Bird Harvest Information Program (Program) regulations. The Service plans to add Texas and Maryland (beginning with the 1994–95 hunting season) to the list of participating States, and to implement some additional modifications to the Program. This regulatory action will require that licensed hunters in all participating States have evidence of current participation in the Program on their person while hunting migratory game birds. The quality and extent of information about harvests of migratory game birds must be improved in order to better manage these populations. Hunters' names and addresses are necessary to provide a sampling frame for a voluntary hunter survey to improve harvest estimates for all migratory game birds.

DATE: The comment period for the proposed rule will end on May 13, 1994.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, Maryland 20708–4028. Comments received will be available for public inspection during normal business hours in Building 158, 10815 Loblolly Pine Drive (Gate 4, Patuxent Wildlife Research Center), Laurel, Maryland 20708–4028.

FOR FURTHER INFORMATION CONTACT: Robert L. Jessen, Migratory Bird Harvest Information Program Coordinator, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, Maryland 20708–4028, (301) 497–4986, FAX (301) 497–5981.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to expand the Harvest Information Program (Program) to include the States of Texas and Maryland beginning in the 1994–95 hunting season, and to make minor modifications to the Program. One such modification is proposed to limit the requirement for participation to only State-licensed migratory bird hunters. Another modification would require compliance with the Program in each State in which an individual hunts migratory game birds.

Background

A notice of intent to establish the Program was published in the **Federal Register** on June 24, 1991. The proposed rule was published in the **Federal Register** on June 10, 1992. State wildlife agencies expressed a number of concerns in response to the proposed rule. The majority of comments were positive and constructive in nature. However, many States were severely disappointed that the sole remaining option placed the major cost burden on the State wildlife agency. The identification of licensed migratory bird hunters and the collection of names, addresses and other information from them would be the State's responsibility and represents the major portion of the cost burden; while conduct of the harvest survey would be a Federal responsibility.

Many States would have preferred the opportunity of using a separate Federal permit card. A State/Federal technical working group is continuing to develop procedures that would improve harvest estimates without placing unnecessary burdens on State agencies, license vendors or the hunters. Alternative survey designs continue to be investigated. Specifically, alternative survey methods for special groups of unlicensed hunters (e.g., junior and senior hunters) are being investigated to determine if any resulting biases in the estimates would compromise the quality of the survey and if other procedures could be developed that would conform to accepted statistical standards.

The final rule was published in the **Federal Register** on March 19, 1993. The effect of that final rule was to establish the Program and implement the pilot phase in three States.

Implementation of Pilot Phase

State wildlife agencies and the Service began implementing and studying the Program in 1992 with a 2–year pilot phase in three volunteer States (California, Missouri, and South Dakota). These States are providing the names and addresses of migratory bird hunters and other necessary information, from which the Service is conducting a national Migratory Bird Harvest Survey.

The pilot phase of the Program is being preliminarily evaluated to determine the adequacy and timeliness of the sample and the time burden, cost, and other impacts on hunters, State license agents, State wildlife agencies, and the Service. The approaches used in different States are being compared for costs, efficiency, convenience and survey performance.

The Service previously stated that after evaluation in 1994 of this pilot phase and consideration of any proposed changes, other States will be phased into the Program until all States will participate in 1998. The suggested schedule was published in the June 10, 1992, proposed rule. Consistent with that schedule, Texas will participate in the Program beginning in 1994. Maryland has requested to participate in the Program earlier than scheduled. Revision of the implementation schedule is being proposed in this rulemaking document.

Description of Program (1992–1994)

Currently, all migratory game bird hunters in participating States are required to have a Program validation indicating that they have provided their names and addresses to the State wildlife agency. Validations are printed on their annual State hunting license or supplementary permit. The State may charge hunters a small handling fee to compensate agents and to cover the State's administrative costs associated with conducting this Program. Individual migratory bird hunters are not required to obtain evidence of Program participation in more than one State per year.

The names, current addresses, and necessary information for an adequate sample of migratory bird hunters are needed in time for hunting-record forms to be distributed to selected hunters before they forget the details of their hunts. Because of this fundamental need, States have only a short time to obtain hunter names and addresses from license vendors and to provide those names and addresses to the Service.

Proposed Modifications to the Program

In addition to implementation of the Program in Texas and Maryland, the Service is proposing several other modifications to the Program. One such modification would require persons who hunt migratory game birds in more than one State to identify themselves as migratory game bird hunters and provide their names, addresses, and dates of birth to each State in which they hunt migratory game birds. Currently, individual hunters are not required to participate in more than one State per year; however, hunters must still adhere to the licensing requirements of all individual States in which they hunt.

Another modification being proposed is to exempt hunters from a permit

requirement if they are also exempt from State-licensing requirements. This would include several categories of hunters such as junior hunters, senior hunters, landowners, and other special categories. These exemptions vary on a State-by-State basis.

Excluding those hunters who are not required to obtain an annual State hunting license from the Program also excludes their harvest from the estimates. The importance of their harvest depends on how many hunters are excluded and on the number of birds they bag. Excluding these hunters may result in serious bias. Therefore, the Service is currently evaluating the effects of excluding these hunters and would appreciate any information that may be available. Minimum survey standards are also being developed for exempt categories. One suggestion is to allow a class of hunters to be excluded from participating in the Program if 1) it is periodically demonstrated that only minimal bias in the estimates results from their exclusion or 2) a statistically sound alternate sampling procedure is implemented. States entering the program will individually address the effects of exempting unlicensed hunters through a cooperative agreement with the Service.

NEPA Consideration

The establishment of this Harvest Information Program and options have been considered in the "Environmental Assessment: Migratory Bird Harvest Information Program." Copies of this document are available from the Service at the address indicated under the caption **FOR FURTHER INFORMATION CONTACT.**

Regulatory Flexibility Act and the Paperwork Reduction Act

On June 14, 1991, the Assistant Secretary for Fish and Wildlife and Parks concluded that the rule would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act 5 USC 601 *et seq.* This rule will eventually affect about 3–5 million migratory game bird hunters when it is fully implemented. It will require licensed migratory game bird hunters to identify themselves and to supply their names, addresses, and birth dates. Additional information will be requested in order that they can be efficiently sampled for a voluntary national harvest survey. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds.

The States may require a small handling fee to compensate their hunting-license vendors and to cover their administrative costs. Many of the State hunting-license vendors are small entities, but this rule should not economically impact those vendors. Only migratory game bird hunters, individuals, would be required to provide this information, so this rule should not adversely affect small entities.

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015. The information is required from licensed hunters to obtain the benefit of hunting migratory game birds.

The public reporting burden for this collection of information is estimated to average 0.015 hours 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. Comments regarding the burden estimate or any other aspect of these reporting requirements should be directed to the Service Information Collection Clearance Officer, ms 224—ARLSQ, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

Executive Order 12612—Federalism

The regulations do not have significant federalism effects as provided in Executive Order 12612. Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. State harvest surveys presently cannot provide adequate national estimates of migratory game bird harvests for the following reasons: Some States do not now conduct annual harvest surveys or maintain accessible lists of hunter names and addresses. Comparable information is not available from all States because States have different licensing laws regulating who must buy a hunting license and different survey procedures. Currently, many State license lists are not available in time to permit distribution of hunter records early in the hunting season. Budget constraints often prevent States from conducting harvest surveys during certain years or could cause some States to eliminate them completely.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State Governments, or intrude on State policy or administration. Therefore, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. In fact, the Service would cooperate with States in providing special surveys to meet mutual management needs, and increased cooperation between Federal and State agencies would reduce duplication of survey efforts.

Executive Order 12360—Taking of Individual Property Rights

Executive Order 12360 discussed guidelines for the taking of individual property rights. These rules, authorized by the Migratory Bird Treaty Act, do not affect any constitutionally-protected property rights. These rules would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Authorship

The primary authors of this rule are Robert L. Jessen and William O. Vogel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons set out in the preamble, 50 CFR part 20 is proposed to be amended as set forth below.

PART 20—MIGRATORY BIRD HUNTING

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

Authority: The Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703-711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a-d and e-j).

2. Section 20.20 is revised to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

(a) *Information collection requirements.* The collections of information contained in § 20.20 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0015. The

information will be used to provide a sampling frame for the national Migratory Bird Harvest Survey. Response is required from licensed hunters to obtain the benefit of hunting migratory game birds. Public reporting burden for this information is estimated to average 0.015 hours 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 the burden, to the Service Information Collection Clearance Officer, MS-224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

(b) *General provisions.* Each person hunting migratory game birds in California, Maryland, Missouri, South Dakota, and Texas shall have identified himself or herself as a migratory bird hunter and given his or her name, address, and date of birth to the respective State hunting licensing authority and shall have on his or her person evidence, provided by that State, of compliance with this requirement.

(c) *Tribal exemptions.* Nothing in paragraph (b) shall apply to hunters on Federal Indian Reservations or to tribal members hunting on ceded lands.

(d) *State exemptions.* Nothing in paragraph (b) shall apply to those hunters who are exempt from State-licensing requirements in the State in which they are hunting.

(e) *Implementation schedule.* The Service is implementing this Program over a 5-year period from 1994–1998 which will incorporate approximately a half million additional migratory bird hunters each year. States must participate on or before the following schedule:

1994 - California, Maryland, Missouri, South Dakota, and Texas.

1995 - Georgia, Louisiana, Minnesota, and Pennsylvania

1996 - Alabama, Illinois, Michigan, Mississippi, North Carolina, Oklahoma, and Tennessee.

1997 - Arizona, Arkansas, Colorado, Florida, Kentucky, South Carolina, Virginia, and Wisconsin.

1998 - Alaska, Connecticut, Delaware, Idaho, Indiana, Iowa, Kansas, Maine, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Rhode Island, Utah, Vermont, Washington, West Virginia, and Wyoming.

Dated: February 11, 1994.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–5787 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–55–F

federal register

Monday
March 14, 1994

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 203 and 205
Prescription Drugs, Policies, Requirements and Administrative Procedures; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 203 and 205

[Docket No. 92N-0297]

RIN 0905-AC81

Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule to set forth agency policies and requirements and to provide administrative procedures, information, and guidance for those sections of the Prescription Drug Marketing Act of 1987 (PDMA), as modified by the Prescription Drug Amendments of 1992 (PDA), that were not implemented by the final rule that set forth Federal guidelines for State licensing of wholesale drug distributors (55 FR 38012, September 14, 1990). FDA is also proposing to amend the definitions section of the State licensing guidelines to make the definition of "wholesale distribution" consistent with that in this proposed regulation.

DATES: Written comments by May 30, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1046.

SUPPLEMENTARY INFORMATION:

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IV. Executive Order 12612: Federalism
V. Paperwork Reduction Act of 1980
VI. Environmental Impact
VII. Request for Comments

I. Background

On April 22, 1988, the President signed PDMA into law (Pub. L. 100-293). According to the congressional findings that were made part of the text of PDMA as section 2, the legislation was intended to ensure that drug products purchased by consumers would be safe and effective and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs were being sold to American consumers. (See sec. 2(8), PDMA.)

Congress found, among other things, that legislation was necessary because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over, or even routine knowledge of, the true sources of drugs. (See secs. 2(2) and 2(3), PDMA.)

Congress found that large amounts of drugs had been reimported into the United States as American goods returned, causing a health and safety risk to American consumers because the drugs may have become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against American manufacturers and had provided the cover for the importation of foreign counterfeit drugs. (See sec. 2(4), PDMA.)

The congressional findings stated that the then-existing system of providing drug samples to physicians through manufacturers' representatives had been abused for decades and had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals. (See sec. 2(6), PDMA.)

According to the congressional findings, the bulk resale of below-wholesale-priced prescription drugs by health care entities for ultimate sale at retail helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices. (See sec. 2(7), PDMA.)

PDMA amends sections 301, 303, 503, and 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331, 333, 353, 381) to: (1) Ban the reimportation of prescription human drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care; (2) ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any drug sample; (3) ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, or counterfeit any drug coupon; (4) establish limits on the distribution of drug samples to practitioners licensed to prescribe such drugs or to pharmacies of hospitals or other health care entities, including a requirement that such distributions occur only at the request of a licensed practitioner; (5) require licensed practitioners to request samples in writing; (6) mandate storage, handling, and recordkeeping requirements for drug samples; (7) prohibit, with certain exceptions, the sale, purchase, or trade, or the offer to sell, purchase, or trade, of prescription human drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization; (8) require State licensing of wholesale distributors of prescription drugs under Federal guidelines that include minimum standards for storage, handling, and recordkeeping; (9) require unauthorized wholesale distributors to provide to each wholesale distributor a statement identifying each sale of the drug before the sale to such wholesale distributor; and (10) set forth civil and criminal penalties for violations of these provisions.

Most PDMA provisions became effective July 22, 1988. However, the drug sample distribution requirements (section 503(d) of the act (21 U.S.C. 353(d))) became effective on October 20, 1988, and the requirement for State licensure of wholesale distributors (section 503(e)(2) of the act) became effective on September 15, 1992 (2 years after the adoption of final rules by the agency setting standards for State licensing). In the **Federal Register** of September 13, 1988 (53 FR 35325), FDA published proposed State licensing guidelines to implement that part of PDMA. FDA received approximately 50 comments on the proposal. These comments were made part of a public docket (Docket No. 88N-0258), which is available for inspection at FDA's Dockets Management Branch (address above). After considering all the comments received on the proposed rule, FDA published revised State licensing guidelines as a final rule (21 CFR part 205) in the **Federal Register** of September 14, 1990 (55 FR 38012). That rule includes minimum requirements for storage and handling of prescription drugs and for establishment and maintenance of records of drug distribution.

The PDMA State licensing requirements were modified by the enactment of PDA (Pub. L. 102–353, 106 Stat. 941) on August 26, 1992. Among other things, PDA amended section 503(e) of the act to establish a temporary Federal wholesale distributor registration procedure for wholesale drug distributors in those States that do not have a licensing program that meets the Federal guidelines. On September 3, 1992, FDA issued a letter to industry and other interested persons providing information and guidance on the procedure to be followed by wholesale distributors required to register under the procedure established by PDA.

PDA also recast other parts of PDMA. Among other things, PDA: (1) Amended section 303(b)(1) of the act to establish a scienter requirement ("knowingly") for conviction of violations of certain prohibited acts under section 301(t) of the act relating to reimportation (section 801(d)(1) of the act), samples (section 503(c)(1) of the act), coupons (503(c)(2) of the act), and unlicensed wholesale distributors (section 503(e)(2)(A) of the act); (2) amended section 503(d) of the act to prohibit the distribution of drug samples by anyone other than the manufacturer or authorized distributors of record, except that Congress excluded from the term "distribute" the provision of a drug sample to a patient by a licensed practitioner, health care professional acting at the direction and under the supervision of such a practitioner, and a hospital or health care entity pharmacy acting at the direction of such a practitioner; (3) amended section 503(d)(2) and (d)(3) of the act to disallow any distribution of drug samples by unauthorized distributors; (4) amended section 503(e)(1) of the act to require that unauthorized distributors provide a statement of origin identifying all prior sales, purchases, or trades of such drugs and the names and addresses of the parties to the transactions to all recipients; and (5) made certain conforming and technical changes to the statute.

On August 1 and November 3, 1988, and January 26, 1990, FDA issued letters to the regulated industry and other interested persons providing information and guidance on those aspects of PDMA that were not implemented by the State licensing rule. The letters requested suggestions from the public regarding the drafting of regulations. Suggestions from the public have been made part of a public docket (Docket No. 88N–258L), which is also available for inspection at FDA's Dockets Management Branch (address above). The agency has received requests for the issuance of further guidance letters to provide specific information in certain areas or to answer particular questions. However, FDA believes that it is now appropriate to establish definitive requirements through notice and comment rulemaking.

In drafting this proposed rule, the agency considered the comments submitted to Docket Nos. 88N–0258 and 88N–258L, including suggestions received in response to FDA's three guidance letters, pertinent comments received in response to the proposed rule on State licensing of wholesale distributors, and other written submissions.

II. Description of the Proposed Rule

FDA is proposing to add a new part 203 to set forth agency policies and requirements and to provide administrative procedures, information, and guidance for those sections of PDMA that were not implemented by part 205. FDA is also proposing to amend § 205.3 to make the definition of "wholesale distribution" consistent with that in proposed part 203.

A summary of the provisions of proposed part 203 follows:

A. Scope

1. General

It was intended that PDMA would protect the public against the threat of subpotent, adulterated, counterfeit, and misbranded drugs posed by the existence of drug diversion schemes and a drug diversion submarket, and the absence of appropriate controls over and creation and maintenance of appropriate records regarding the distribution of prescription drugs

Accordingly, the scope of the proposed rule, as set forth in proposed § 203.1, includes establishment of procedures and requirements pertaining to the reimportation and wholesale distribution of prescription drugs; the sale, purchase, or trade (or the offer to sell, purchase, or trade) of prescription drugs by hospitals, health care entities, and charitable institutions; and the distribution of prescription drug samples.

2. Bulk Drugs

Some questions have been raised about the applicability of PDMA to bulk drugs. The statutory language of PDMA encompasses all drugs subject to section 503(b) of the act within its scope.

The legislative history ("Report of the Committee on Energy and Commerce," H. Rept. 100–76, April 30, 1987, and "Report of the Committee on Finance," S. Rept. 100–202, March 18, 1988) or the congressional hearing record do not suggest that bulk drug substances be treated any differently from other prescription drugs. Bulk drug substances are susceptible to the same problems of lack of accountability and diversion that this legislation was intended to remedy. It is clear that applying the provisions of the statute to bulk drug substances would help protect against the abuses that Congress intended to address and contribute to the protection of the public health. Accordingly, bulk drug substances are, as drugs within the meaning of section 503(b) of the act, expressly brought within the scope of PDMA and these implementing regulations.

3. Biological Products

Questions have also been raised about the applicability of PDMA to biological products, even though the statutory language of PDMA encompasses all drugs subject to section 503(b) of the act.

There is nothing in the legislative history or the congressional hearing record to suggest that biological products that are prescription drugs under section 503(b) of the act should be treated differently from other prescription drugs. Biological products, except for blood and blood components intended for transfusion, are susceptible to the same problems of lack of accountability and diversion that this legislation was intended to remedy. It is clear that applying the provisions of the statute to biological products, except for blood and blood components intended for transfusion, or biological products which are also medical devices, would help protect against the abuses that Congress intended to address and contribute to the protection of the public health. Accordingly, biological products that are prescription drugs under section 503(b) of the act, except for blood and blood components intended for transfusion, fall under the scope of PDMA and are expressly included in these implementing regulations.

4. Blood and Blood Components Intended for Transfusion

Since passage of PDMA, a number of persons have presented to FDA issues posed by the application of PDMA to the distribution and sale of blood and blood components intended for transfusion by blood establishments and hospitals. Two comments to the agency requested clarification of PDMA's scope and urged FDA to exempt blood establishments from all of PDMA's provisions. The comments contended

that licensing blood distributors as wholesalers would seriously disrupt the Nation's blood services. A third comment suggested that the agency could, by notice and comment rulemaking, exempt blood and blood components from PDMA by declaring that they are not prescription drugs for PDMA purposes.

PDMA, by its literal terms, applies to all drugs that are subject to section 503(b) of the act; that is, to all human prescription drugs, including biological products. There is no doubt that blood and blood components intended for transfusion are prescription drugs. (See 21 CFR 606.121(c)(8)(i) and 610.61(s). See also 47 FR 22518, May 25, 1982; 46 FR 40212, August 7, 1981.) However, if PDMA were considered applicable to the distribution of blood and blood components, the result would be to impede the existing blood distribution system, thereby interfering with our Nation's blood supply. Because application of PDMA to blood and blood components would produce this untenable result, FDA believes that Congress could not have intended to subject blood and blood components to PDMA's provisions.

Moreover, the legislative history lacks any discussion of PDMA's application to blood and blood components and also clearly shows that Congress intended that PDMA remedy problems associated with the distribution of those drugs that are popularly referred to as "medicines" or "pharmaceuticals." (See Pub L. 100–293, sec 2 (1988) ("Report of the Committee on Energy and Commerce," H Rept 100–76, April 30, 1987, and "Report of the Committee on Finance," S Rept. 100–202, March 18, 1988).) Blood and blood components are unique drug products that are distributed in an entirely different way from other prescription drugs. FDA believes that the fact that blood and blood components are not part of the system of distribution and marketing that Congress intended to regulate under the terms of PDMA further signals that Congress could not have intended to include blood and blood components within the scope of the licensing requirement.

Accordingly, FDA has taken a number of actions to clarify the scope of PDMA to prescription drugs other than blood and blood components intended for transfusion. In the final State licensing guideline rule (55 FR 38012 at 38024), FDA specifically excluded from the definition of "wholesale distribution" the sale, purchase, or trade of blood and blood components intended for transfusion (see § 205.3(f)(8)). At the same time, FDA published another proposed rule, "Applicability to Blood and Blood Components Intended for Transfusion; Guidelines for State Licensing of Wholesale Prescription Drug Distributors" (55 FR 38027, September 14, 1990), asking for comments on the exclusion of blood and blood components intended for transfusion from the PDMA State licensing guidelines.

After considering the comments received and reviewing PDMA's purpose and its legislative history, FDA has tentatively concluded that PDMA is not intended to apply to blood and blood components intended for transfusion. Accordingly, at § 203.1 the proposed rule would exclude blood and blood components intended for transfusion from the requirements of and the restrictions in PDMA and also adds specific language at § 203.22(g) excluding blood and blood components intended for transfusion from the PDMA sales restrictions.

5. Oxygen

Questions have also been raised about the applicability of PDMA to the drug oxygen, U.S.P (U.S. Pharmacopeia). FDA advises that oxygen, U.S.P., is a prescription drug subject to section 503(b) of the act, and, therefore, within the scope of PDMA and these proposed regulations.

B Reimportation

Section 801(d) of the act (21 U.S.C 381(d)) provides that a prescription drug that is manufactured in a State and exported may not be reimported into the United States unless it is imported by the manufacturer, except when authorized by the Secretary of Health and Human Services for emergency medical care The delegation of authority provisions at 21 CFR 5.10 redelegate the functions of the Secretary to the Commissioner of Food and Drugs.

Section 801(d) of the act responds to a finding that large amounts of drugs were being reimported into the United States as "American Goods Returned," and that these imports posed a health and safety risk to American consumers because they could become subpotent or adulterated during foreign handling and shipping. (See sec. 2(4), PDMA.)

The congressional findings also acknowledged that what was termed "the ready market for prescription drug reimports" was "the catalyst for a continuing series of frauds against American manufacturers and has provided the cover for the importation of foreign counterfeit drugs." (See sec. 2(5), PDMA.)

1. Restrictions on Reimportation

Proposed § 203.10 sets forth the restriction that no prescription drug manufactured in a State and exported from the United States may be reimported by anyone other than its manufacturer, except that FDA may grant permission to a person other than the manufacturer to reimport a prescription drug if it deems such reimportation is required for emergency medical care.

2. Defining "Manufacturer"

FDA defined the term "manufacturer" in the PDMA State licensing regulation to mean anyone engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug (§ 205.3(d)). This definition is somewhat more inclusive than the definition used earlier by the agency in the labeling provisions at § 201 1 (21 CFR 201.1). The definition in § 201 1(b) states that the manufacturer is the person who performs all of the following operations that are required to produce the product: (1) Mixing, (2) granulating, (3) milling, (4) molding, (5) lyophilizing, (6) tableting, (7) encapsulating, (8) coating, (9) sterilizing, and (10) filling sterile, aerosol, or gaseous drugs into dispensing containers; or at least some of the operations if the labeling indicates the presence of other manufacturers Under § 201.1, a packer or distributor is not the same as a manufacturer

FDA concluded that the more inclusive definition of "manufacturer" was consistent with the intent of the statute in imposing the requirement for State licensing of wholesale drug distributors; however, the agency has preliminarily concluded that a less inclusive definition of that term would be more consistent with the intent of the remaining sections of PDMA. For example, the statutory provision against reimportation by persons other than the manufacturer (except when permission is granted by FDA) is intended to establish accountability in reimportations so that adulterated and/or misbranded goods do not reenter commercial channels in the United States. The reimportation provision is based on the assumption that a manufacturer, in the less inclusive sense, is the person most knowledgeable about the product's characteristics; is the most capable of determining that the product meets the stability, quality, and purity standards it is represented to possess; and is the only person capable

of authenticating the basic integrity of the product.

The remaining sections of PDMA are consistent with the less inclusive definition of "manufacturer" in § 201.1, rather than the more inclusive definition in § 205.3(d). Accordingly, proposed § 203.3(p) proposes to adopt the definition of "manufacturer" in § 201.1 for this rule.

3. Applications for Reimportation to Provide Emergency Medical CareProposed § 203.11 provides an administrative procedure by which applications may be made by a person other than the manufacturer for the reimportation of prescription drugs for emergency medical care. The proposal would codify the current procedure whereby applications for reimportation are submitted to the Director of the FDA District Office in the district where reimportation is sought. The District Office would review and approve or disapprove each application.

4. An Appeal From an Adverse Decision by the District Office

Proposed § 203.12 would also codify the current procedure that permits an appeal from an adverse decision by the district office to be made to the Office of Compliance (HFD–300), Center for Drug Evaluation and Research, for prescription human drugs other than biological products. An appeal from an adverse decision involving human prescription biological products is to be made to the Office of Compliance (HFM–600), Center for Biologics Evaluation and Research.

C. Sales Restrictions

Section 503(c)(3) of the act prohibits, with certain exceptions, the sale, purchase, or trade (or any offer to sell, purchase, or trade) of any prescription drug that was purchased by a public or private hospital or other health care entity, or donated or supplied at a reduced price to a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

1. Defining "Charitable Organization"

Section 501(c)(3) of the Internal Revenue Code generally exempts from income taxes not-for-profit organizations that operate for religious, charitable, scientific, literary, educational, and public safety purposes. However, such exemptions are not automatic. Under 26 CFR 1.501, a charitable organization must apply for and be granted tax-exempt status. Tax-exempt status may be revoked and the organization may lose its exemption if it fails to meet the requirements of the statute and regulations.

It is FDA's view that an organization can be accurately described as one fitting the requirements of section 501(c)(3) of the Internal Revenue Code only if it has been granted tax-exempt status by the Department of the Treasury. Accordingly, FDA proposes to define the term "charitable organization" in proposed § 203.3(f) as a nonprofit hospital, health care entity, organization, institution, foundation, association, or corporation that has been granted an exemption under section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

2. Restrictions and Exclusions

Proposed § 203.20 restates the statutory restrictions on prescription drug sales by hospitals, health care entities, and charitable institutions (section 503(c)(3) of the act). These restrictions reflect a congressional finding that the resale of prescription drugs by health care entities at below wholesale prices had helped to fuel the drug diversion market and that such sales constituted an unfair form of competition to legitimate wholesalers and retailers paying the prevailing market prices. (See sec. 2(7), PDMA.)

The statute does not distinguish sales made at the average wholesale price (AWP) and those made at below AWP or at more than the AWP. The sales restrictions apply to all sales, purchases, or trades by hospitals, health care entities, and charitable institutions. Sales of any human prescription drugs purchased by a hospital or other health care entity, or donated or supplied at reduced cost to a charitable institution, are prohibited unless excepted by section 503(c)(3)(B) of the act or exempted under proposed §§ 203.22, 203.23, or 203.24.

In its findings, Congress stated that it believed that these resales had helped to create an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs would be sold to American consumers. (See sec. 2(8), PDMA.)

a. *Hospital, health care entity, or charitable institution cannot be wholesaler.* FDA has learned that some hospitals and health care entities, including physicians, have obtained licenses as wholesale distributors in an effort to circumvent the statutory restrictions against the sale of prescription drugs by hospitals, health care entities, and charitable institutions. Those hospitals and health care entities that have secured wholesale drug distributor licenses claim that the statutory restrictions are made inapplicable to them by the first clause of the last sentence of section 503(c)(3) of the act, which reads: "For purposes of this paragraph, the term 'entity' does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law * * *."

Such a reading is inconsistent not only with general rules of statutory construction, but with the intent of Congress as reflected in the legislative history. The legislative history, which addresses Congress' concern about donations to charitable institutions and institutional discounts for hospitals and health care entities, notes that some of these institutions had been sources of unfair competition and drug diversion, and explains that the statutory prohibition against the sale of drugs donated to or acquired at reduced price by charitable institutions or purchased by hospitals or health care entities is directed at preventing unfair profits through resales of such drugs. Congress said:

> Section 503(c)(3) would prohibit resales of pharmaceuticals by hospitals and other health care entities or charitable organizations with certain exceptions. This provision is intended to cover resales by both for profit and nonprofit health care entities. These institutions typically receive discount prices, substantially below the average wholesale price (AWP) for pharmaceuticals, based on their status as a health care entity or charity. When hospitals or other health care entities obtain pharmaceuticals at favorable prices and then resell those drugs at a profit, they are unfairly competing with wholesalers and retailers who cannot obtain such a favorable price. Such resales defraud manufacturers, who are led to believe that the drugs are for the use of the health care entity. In any case, these resales reward the unscrupulous and penalize the otherwise honest and efficient wholesaler or retailer while fueling the diversion market.

(H. Rept. 100–76, pp. 12–13.)

FDA interprets the first clause of the last sentence of section 503(c)(3) of the act to mean that the general prohibition against drug sales by hospitals, health care entities, and charitable institutions was not intended to interfere with the operations of legitimate licensed prescription drug wholesalers and retail pharmacies. Section 503(c)(3) of the act does not open up a loophole for a hospital, health care entity, or charitable institution to avoid the statutory prohibition against drug sales simply by obtaining a wholesaler license.

Accordingly, proposed § 203.3(n) would state that a person cannot simultaneously be a "health care entity" and a retail pharmacy or wholesale distributor. The agency is also proposing to amend the State licensing guidelines by adopting the same

definition for "health care entity" at § 205.3(h).

If a charitable institution or a for-profit or nonprofit hospital or health care entity has a corporate for-profit subsidiary that is a wholesale distributor or retail pharmacy, or if it is part of a group in which there is common control over the hospital or health care entity and a wholesale distributor or retail pharmacy, then the charitable institution, hospital, or health care entity would be prohibited under section 503(c)(3) of the act and proposed §§ 203.20 and 203.22 from transferring any prescription drug donated or supplied at reduced price to the charitable institution or purchased by the hospital or health care entity to the related wholesale distributor or retail pharmacy for further sale except for a sale under a valid prescription or for emergency medical reasons.

A charitable institution, hospital, or health care entity that has a wholesale distributor or retail pharmacy subsidiary, or one that is part of a group in which there is common control over the charitable institution, hospital, or health care entity and a wholesale distributor or retail pharmacy, should maintain books and records that provide sufficient audit trails to trace the purchase and sale of prescription drugs to ensure that no prescription drug donated or supplied at reduced price to the charitable institution or purchased by the hospital or health care entity is transferred to a related wholesale distributor or retail pharmacy for further sale except for a sale under a valid prescription or for emergency medical reasons.

b. *Statutory exclusions.* Proposed § 203.22 restates the statutory exclusions to the sales restrictions. They are: (1) The purchase or other acquisition of a drug for its own use by a hospital or other health care entity that is a member of a group purchasing organization from the group purchasing organization or from other hospitals or health care entities that are members of the organization; (2) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by law; (3) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; (4) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; or (5) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a valid prescription.

c. *Common control.* One statutory exclusion to the general prohibition against resale of drugs by hospitals, health care entities, and charitable institutions permits the sale, purchase, or trade of prescription drugs among hospitals and health care entities that are under common control. There is no statutory definition of the term "common control," nor is the term mentioned in the legislative history.

The concept of common control can be found in other Federal regulatory schemes that were in use at the time PDMA was enacted into law. Both the Securities and Exchange Commission and the Environmental Protection Agency define "common control" to mean possession of the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting securities or rights, contract, or otherwise. (See 17 CFR 230.405 and 40 CFR 66.3(f).) FDA included this definition in the State licensing guidelines at § 205.3(f)(4). This proposal would adopt the same definition in proposed § 203.3(g).

d. *Sales for emergency medical reasons.* Section 503(c)(3) of the act permits the sale, purchase, or trade of prescription drugs by a hospital, health care entity, or charitable institution for emergency medical reasons. The statute states that "emergency medical reasons" includes transfers of a drug between health care entities or from a health care entity to a retail pharmacy undertaken to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules. The statute does not further elaborate on the term "emergency medical reasons."

FDA believes that it may be useful to specify some of the circumstances in which a sale for emergency medical reasons would be allowed. (See proposed § 203.3(k).)

FDA received a significant number of comments from providers of emergency care, including emergency medical services, ambulance corporations, fire companies, rescue squads, urgent care providers, emergency care physicians and technicians, and State emergency care agencies and commissions that advised the agency that hospital pharmacies have traditionally supplied drugs for emergency use by emergency medical services and licensed practitioners' offices operating in the general service area of the hospital. Several comments stated that wholesale distributors are reluctant to open small accounts to provide such drugs for emergency care, and that nearby hospital pharmacies are the logical providers. Moreover, the comments noted that many States encourage hospitals to supply drugs for emergency use to emergency medical services, and some States require emergency services to acquire their drugs exclusively from hospitals.

The proposal would allow sale of drugs by a hospital or health care entity to nearby emergency medical services such as ambulance services, rescue squads, and fire companies in the same State or service or marketing area for use in emergency treatment and to licensed practitioners for emergency office treatment. The proposal would also define emergency medical reasons to allow hospitals and health care entities to provide minimal emergency supplies to nursing homes.

In contrast, FDA believes that the exception for emergency medical reasons does not permit hospitals or health care entities regularly to sell to licensed practitioners prescription drugs that will be used for routine office procedures.

e. *Government hospitals and health care entities.* Proposed § 203.22(f) would also exclude the sale, purchase, or trade of prescription drugs by Federal, State, and local government hospitals and health care entities to other Federal, State, and local government hospitals or health care entities from the general prohibition against the sale, purchase, or trade of prescription drugs by a hospital, health care entity, or charitable institution.

Congress has established an extensive system of public hospitals and health care entities. These include hospitals, clinics, and dispensaries operated for the military by the Department of Defense; hospitals and clinics operated by the Veterans' Administration; and hospitals and clinics operated by the U.S. Public Health Service (including Indian Health Service hospitals and clinics).

In addition, State and local governments have established public health hospitals, clinics, and dispensaries, including drug treatment inpatient and outpatient facilities. These facilities operate under a variety of organizational structures. They may be owned and operated by governmental entities, or be organized as private corporations or associations under contract to State or local government agencies.

These health care entities may have interagency arrangements for the purchase and exchange of prescription drugs. Such facilities operate because of Federal, State, or local governmental

commitments to provide health care to particular classes of patients in response to specific client needs. Among these needs are the provision of services to people with low incomes, the distribution of vaccines, and the dispensing of antitoxins and blood derivatives in public health emergencies.

As noted, the adoption of the prohibition against sales by hospitals or health care entities was prompted in part because of the differential pricing structure that permits purchases by hospitals and health care entities at below wholesale prices and the resultant temptation to resell drugs so acquired at a profit. However, there is no financial incentive for a Federal, State, or local government hospital or health care entity to sell prescription drugs purchased at below wholesale prices because any profit from such a sale would go to the Federal or State treasury. Accordingly, FDA believes that there is little likelihood that permitting Federal, State, or local government hospitals and health care entities to sell prescription drugs to other Federal, State, or local government hospitals and health care entities would lead to the kinds of abuses that PDMA was designed to end.

Therefore, proposed § 203.22(f) would exclude such transactions from the general prohibition against resales by hospitals and health care entities and thus permit Federal, State, or local government hospitals and health care entities to sell drugs to other Federal, State, or local government hospitals and health care entities.

FDA has been asked whether a State or local government agency, which, under a contract or memorandum of agreement, sends or allows some of its patients to be treated at a private local clinic or other health care entity, may transfer prescription drug products to such a facility to be dispensed to patients. In other words, would such a transfer violate the prohibition against the sale, purchase, or trade of prescription drugs by a hospital, health care entity, or charitable institution?

FDA advises that if a State or local government agency functions as or operates a hospital, health care entity, or charitable institution, and a private health care entity is bound by a contractual agreement to the State or local government agency, then the State or local government hospital or health care entity may sell prescription drugs to the contract private health care entity provided that the prescription drugs sold are only used to serve government patients and programs. The State or local government hospital or health care agency supplying the drug and the contract health care entity would be obligated to implement appropriate controls to ensure that the drugs sold by the Government hospital or health care entity to the contract health care entity are dispensed to patients in the Government program and not diverted or sold to other patients or otherwise used for non-Government purposes.

If the State or local government agency does not function as or operate a hospital, health care entity, or charitable institution, and is acting as a prescription drug wholesaler, the prohibition against the sale of prescription drugs by a hospital, health care entity, or charitable institution would not be applicable.

3. Revocation of Acceptance, Reshipment, and Returns

FDA proposes to clarify the circumstances under which hospitals, health care entities, and charitable institutions may, without violating section 503(c)(3) of the act, return or ship back prescription drugs to the manufacturer or distributor from which they were purchased.

In particular, proposed §§ 203.23 and 203.24 would, respectively, describe the conditions by which hospitals, health care entities, and charitable institutions may: (1) Revoke acceptance of any prescription drug received because of an ordering or delivery mistake and ship them back to the manufacturer or distributor, and (2) return a drug to the manufacturer or distributor.

A number of persons who submitted comments to the PDMA docket questioned the effect of the new statutory language on commercial practice in the pharmaceutical industry. Several persons argued that the sales provisions in the Uniform Commercial Code treat a sale as completed once a nondefective product has been ordered, delivered, and paid for, unless specific contractual provisions make the sale conditional or revocable. Several persons urged that FDA view a return for cash or credit after a completed sale as a new and prohibited sales transaction.

However, many other comments to the agency in the months after passage of PDMA observed that under common commercial practice in the pharmaceutical industry, manufacturers and wholesale distributors permit returns and urged that this practice be allowed to continue. FDA is aware that hospital, health care entity, or charitable institution pharmacies, and distributors sometimes return products because of overstocks, changes in institutional formularies, the death of a patient for whose use a drug product was acquired, or other reasons. The comments received by the agency argued that to permit returns would both help to keep down the costs of medical care and reduce the risk that adulterated or misbranded drugs would find their way into the diversion market.

FDA has tentatively concluded that it should, under specified conditions, allow drug products to be shipped back or returned to the manufacturer or distributor, and this tentative conclusion is reflected in proposed §§ 203.23 and 203.24.

Under proposed § 203.23, a hospital, health care entity, or charitable institution could revoke a sale and purchase transaction because of a mistake in ordering or delivery and ship the prescription drug back, provided: (1) The hospital, health care entity, or charitable institution ships the drug back within 10 working days of receipt; (2) the reshipment is made under proper storage, handling, and shipping conditions; and (3) if reshipped to the wholesale distributor, the hospital, health care entity, or charitable institution provides written notice to the manufacturer of the revocation and reshipment.

The proposal would require that the manufacturer be notified of the reshipment so that any chargebacks to the manufacturer by the wholesale distributor or special price reduction credited by the manufacturer to the wholesale distributor would be factored into the credit or refund given the distributor. This is intended to prevent windfall profits from the return of a specially priced drug to the wholesale distributor.

Under proposed § 203.24, a hospital, health care entity, or charitable institution could return a product it had purchased from a manufacturer or wholesale distributor, provided that: (1) The hospital, health care entity, or charitable institution notifies the manufacturer that the prescription drug product has been returned to the wholesale distributor; and (2) the hospital, health care entity, or charitable institution fills out a credit memo. Proposed § 203.24 would require the hospital, health care entity, or charitable institution to send a copy of the credit memo to the manufacturer, for the same reasons that notification of the manufacturer is required in the event of a revocation and reshipment, i.e., so that any chargebacks or reduced prices will be factored into any credit or refund to prevent windfall profits from the transaction.

Proposed §§ 203.23 and 203.24 would both require detailed documentation to

provide the kind of accountability contemplated by the act to help ensure against diversion. To ensure that returned drugs remain safe and effective, both proposed sections would require that drugs returned to a manufacturer or wholesale distributor be kept under proper conditions for storage, handling, and shipping, and that written documentation reflecting the maintenance of proper conditions be provided to the manufacturer or wholesale distributor to which the drugs are returned.

Under the proposal, the value of any credit, refund, or merchandise exchanged for the returned product could not exceed the purchase price.

For purposes of clarification and to ensure that the State licensing regulation and this proposed rule, when adopted, are consistent, the agency is also proposing to amend the definitions in the State licensing guidelines at § 205.3(f) by adding two additional exceptions to "wholesale distribution" for the reshipment of drugs, when conducted in accordance with § 203.23, and drug returns, when conducted in accordance with § 203.24.

D. Samples

To provide accountability and oversight in the sample distribution process, PDMA established in section 503(d) of the act a strict system of controls over the distribution of prescription drug samples, which are defined in section 503(c)(1) of the act. Under the statutory scheme, no person could distribute any drug sample, except for a manufacturer or distributor who distributed drug samples in accordance with specific requirements and in response to a written request from a licensed practitioner.

Under sections 503(d)(1) and (d)(2) of the act, both manufacturers and distributors could engage in sample distribution if certain requirements were followed. However, section 4(2) of PDA further restricted the persons who can engage in distribution of drug samples by amending section 503(d)(1) and (d)(2) of the act to restrict sample distributions to manufacturers and authorized distributors of record. This amendment is demonstrative of the intent of Congress, as reflected elsewhere in PDMA and PDA, to restrict the activities of drug distributors who are not authorized distributors of record. Proposed §§ 203.30, 203.31, and 203.33 through 203.39 are consistent with this amendment.

Under the revised statutory scheme, no person may distribute any drug sample, except for a manufacturer or authorized distributor of record who distributes drug samples in accordance with specific requirements and in response to a written request from a licensed practitioner.

Section 503(d)(1) of the act states that, for purposes of this subsection, the term "distribute" does not include the providing of a drug sample to a patient by a practitioner licensed to prescribe such drug, by a health care professional acting at the direction and under the supervision of such a practitioner, or the pharmacy of a hospital or of another health care entity acting at the direction of such a practitioner who received the drug sample in accordance with the act and regulations. The definition of "distribute" in proposed § 203.3(h) reflects this statutory exclusion.

PDMA sets up two different sample distribution systems, depending on the mode of delivery: (1) By mail or common carrier, and (2) by means other than mail or common carrier, i.e., representative or detailer.

If a sample is delivered by mail or common carrier, the statute requires the recipient to execute a written receipt when the drug sample is delivered and return the receipt to the manufacturer or authorized distributor of record from which the drug sample was received. If the sample is delivered by a representative, a number of additional procedures are required by the statute that pertain to storage and handling, inventories, recordkeeping, reporting of thefts and significant losses, notification of convictions of representatives for drug sample violations, and accountability. The statute specifies minimum requirements for the contents of written request forms and details certain recordkeeping and reporting requirements.

1. Requirements for Drug Sample Distribution

The requirements for distribution of drug samples by manufacturers and authorized distributors of record by mail or common carrier are set forth in proposed § 203.30. The requirements for distribution of drug samples by representatives are set forth in proposed § 203.31. The proposed sections provide detailed requirements for written request forms, receipts, and recordkeeping.

Most of these requirements are statutory; however, FDA has tentatively concluded that clarification of some of the statutory requirements is desirable. FDA also has tentatively concluded that other requirements should be imposed to help ensure smooth operation of the system, effective enforcement, effective accountability and oversight of drug sample distribution, and provide adequate safeguards against drug sample diversion.

2. Contents of the Sample Request Forms

Proposed §§ 203.30 and 203.31 would require the written request form for drug samples to bear certain information: (1) The name, address, professional title, signature of the practitioner making the request; (2) the practitioner's State license number or the Drug Enforcement Administration (DEA) identification number; (3) the proprietary or established name and strength of the drug sample requested; (4) the quantity requested; (5) the name of the manufacturer of the drug sample and the authorized distributor of record, if the drug sample is requested from a distributor; and (6) the date of the request.

A number of comments suggested that it is sometimes difficult for a manufacturer or distributor to determine whether or not a particular person who wishes to receive drug samples is a licensed practitioner. FDA has added the requirement that the request form bear the practitioner's State license or DEA identification number to assist the manufacturer or distributor in determining whether or not a person is a licensed practitioner.

The statute requires a request form to bear the "identity" of the drug sample being requested. FDA has clarified the meaning of "identity" in the proposed rule by specifying that the request form bear the proprietary or established name and strength of the requested sample.

PDMA requires that the request form bear the name of the manufacturer of the drug. However, where the statute also permits an authorized distributor of record to distribute drug samples, the identity is incomplete without naming both the manufacturer and distributor. In that circumstance, FDA proposes to require that the name of the distributor as well as the manufacturer be made part of the sample request form.

The statute also permits delivery of a drug sample to the pharmacy of a hospital or other health care entity at the request of a licensed practitioner. However, the statute does not state how that request for delivery should be made. FDA has tentatively concluded that the name and address of the intended recipient should be part of the request form. This conclusion is reflected in the requirements in proposed §§ 203.30 and 203.31 that, if the request is being made by a licensed practitioner for delivery of a drug sample to a hospital or health care entity pharmacy, the name and address

of the intended recipient be included on the request form.

3. Drug Sample Receipts

Proposed §§ 203.30 and 203.31 would require the execution of a written receipt by the recipient upon delivery of a drug sample. The proposed sections also set out the contents of the receipt.

The statute requires the execution of a receipt upon delivery of a drug sample by mail or common carrier to establish an audit trail for drug sample orders and deliveries and to ensure that drug samples ordered are received. The statute does not require the execution of a written receipt for samples delivered by representatives in the apparent belief that a representative always delivers a drug sample to a licensed practitioner at the same time that the licensed practitioner signs the request form.

A number of comments suggested that samples frequently are not delivered at the time of the request, i.e., some time elapses between request and delivery, even when a representative personally delivers the drug sample. Sometimes the period of time is only a few minutes, but often it may be hours, days, or weeks. In some instances, a representative may receive a request for a drug sample at one sales call and deliver the requested sample at a later date. In these cases, because of lapses of memory, mistake, or because a diversion scheme may be underway, the samples delivered may not always match the request. Accordingly, the agency has tentatively concluded that the requirement for a written receipt should extend to all drug sample deliveries, and that requirement is included in proposed §§ 203.30 and 203.31.

A sample request and receipt need not be on separate forms if delivery is by a representative. A single form could be devised and used containing all of the required information, which could be fully completed and executed with a single signature, if the request and delivery are simultaneous, or executed in part with a signature for the request at the time of the request, and executed in part with a second signature acknowledging receipt at the time of the delivery

Proposed §§ 203.30(c) and 203 31(c) state that a receipt is to be on a form designated by the manufacturer or distributor. If the drug sample is received by the requesting practitioner, both proposed sections would require that the receipt contain the name, address, professional title, and signature of the practitioner or the practitioner's designee who acknowledges delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery If the drug sample is received by the pharmacy of a hospital or other health care entity at the request of a licensed practitioner, both proposed sections would require the receipt to contain the name and address of the requesting licensed practitioner, the name and address of the hospital or health care entity pharmacy designated to receive the drug sample; the name, address, professional title, and signature of the person acknowledging delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery FDA believes this information is necessary to ensure that the sample received is the same as the sample requested.

4. Additional Requirements For Delivery of Drug Samples by Representatives

PDMA provides that manufacturers and distributors that utilize representatives for the delivery of drug samples must abide by a number of additional requirements. These additional requirements are intended to guard against the kinds of abuses that Congress' findings stated had been an integral part of the drug sample delivery system and had led to large-scale drug sample diversion.

a. *Inventories of drug samples of manufacturers' and distributors' representatives.* The statute provides that each drug manufacturer or distributor that engages in drug sample distribution is required to conduct, at least annually, a complete and accurate inventory of all drug samples in the possession of representatives (21 U.S.C. 353(d)(3)(C)). The inventory is intended to guard against drug sample diversion by providing manufacturers and distributors information that will permit them to identify diverters and take appropriate action and provide data for FDA enforcement activities.

The statute does not specify what is meant by such an inventory, nor how it is to be conducted and reported. It is FDA's preliminary view that such an inventory must go beyond a mere physical count, and that meaningful information and data can only be provided if the inventory is conducted utilizing generally accepted inventory practices and a reconciliation report is prepared that relates the latest inventory to the most recent prior inventory and to drug samples acquired and distributed in the interim.

Accordingly, proposed § 203.31(d) would require the manufacturer or distributor to inventory all drug samples in the possession of a manufacturer's or distributor's representative, and keep a record of the inventory. The record would be required to identify all drug samples by established or proprietary name, dosage strength, and number of sample units of each drug sample in stock.

The proposal would require that the manufacturer or distributor reconcile the number of drug samples on hand with the number received during the reporting period. The reconciliation report would be required to include: (1) A report of the physical count of the most recently completed prior inventory; (2) a record of each drug sample shipment received since the most recently completed prior inventory, including the sender and date of the shipment, and the established or proprietary name, dosage strength, and number of sample units received; (3) a record of drug sample distributions since the most recently completed inventory showing the name and address of each recipient of each sample unit shipped, the date of the shipment, and the established or proprietary name, dosage strength, lot or control number, and number of sample units shipped; and (4) an explanation for any significant loss.

To ensure impartiality, the proposal would also require that the inventory and reconciliation reports be conducted and prepared by persons other than the representatives being inventoried or their supervisors or managers in their direct line of supervision or command.

To guard against drug sample diversion, the proposed section would require manufacturers and distributors to evaluate carefully any apparent discrepancy or significant loss in the inventory and reconciliation, and to investigate fully any significant loss that cannot be justified.

b. *Lists of manufacturers' and distributors' representatives.* PDMA requires that each manufacturer or authorized distributor of record who distributes drug samples maintain a list of the names and addresses of its representatives who distribute drug samples and of the sites where drug samples are stored. The proposal restates this statutory requirement (§ 203.31(e)).

c. *Notification if representative is convicted of violations.* The statute requires drug manufacturers or distributors of record to report to FDA any conviction of a representative for violations of section 503(c)(1) of the act or a State law because of the sale,

purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample. The proposal restates this statutory requirement (§ 203.31(f)).

5. Drug Sample Storage and Handling Requirements

FDA has already excluded the distribution of drug samples by representatives from the definition of "wholesale distribution" in § 205.3(f)(7), and the agency is proposing to adopt this exclusion in the definition of "wholesale distribution" in proposed § 203.3(y). In view of this, representatives are not required to be licensed as wholesale distributors by the States. PDMA requires manufacturers and authorized distributors of record to store all drug samples under conditions that will maintain their stability, integrity, and effectiveness, and ensure that the drug samples are not contaminated, deteriorated, or otherwise adulterated. Proposed § 203.32 reflects this requirement.

A representative, as an agent of the manufacturer or authorized distributor of record, is bound by the same standard, and is required to take adequate precautions to ensure the safety and efficacy of any drug samples the representative distributes. Generally, if a representative follows the labeling and compendial requirements for storage and handling of a particular prescription drug in handling samples of that drug, the safety and efficacy of the drug sample may be assured.

6. Drug Sample Forms

A number of persons posed questions regarding drug sample request and receipt forms. FDA does not contemplate developing its own forms for sample request and receipt, and instead intends to rely on manufacturers and distributors to develop appropriate forms. Accordingly, any written request or receipt form developed by a manufacturer or authorized distributor of record that complies with the requirements of proposed § 203.33 would be acceptable to FDA if it contains the information and any signature required in this section.

The agency wishes to encourage transmission and receipt of sample request and receipt forms by the most efficient and expeditious means. Accordingly, proposed § 203.33 would permit such forms to be delivered by mail, common carrier, or private courier or to be transmitted photographically or electronically (i.e., by telephoto, wirephoto, radiophoto, facsimile transmission (FAX), xerography, or electronic data transfer) or by any other system, provided that the method for transmission meets the security requirements set forth in proposed § 203.60(d).

7. Written Policies and Procedures and Other Requirements for Drug Sample Distribution

FDA received a number of questions and comments from drug manufacturers and distributors seeking assistance in developing appropriate administrative systems for distributing drug samples. There are a wide variety of administrative systems in use, and enforcement has been complicated by the multiplicity of sample distribution procedures. Although standardization is not necessary, the agency believes that clear internal administrative systems are essential to ensure that sample distribution is carried out efficiently and that the statutory requirements are met.

In addition, FDA expects that manufacturers and distributors will have administrative systems in place to review all losses and thefts so that patterns that may indicate the possibility of drug sample diversion will be detected. The agency believes that this is consistent with Congress' intent that manufacturers and distributors develop adequate audit and security systems to detect and investigate sample losses and thefts. (H. Rept. 100–76, p. 20; S. Rept. 100–202, p. 9.)

Accordingly, under proposed § 203.34, each manufacturer or authorized distributor of record that distributes drug samples would be expected to adopt an administrative system to monitor losses and thefts.

Also, proposed § 203.34 would require drug manufacturers and distributors to establish, maintain, and adhere to written policies and procedures describing its administrative systems for sample distribution. The proposed section contemplates that each manufacturer's or distributor's written policies and procedures would describe its administrative system for: (1) Distributing drug samples by mail or common carrier, including methodology for reconciliation of requests and receipts; (2) distributing drug samples by means other than mail or common carrier; (3) conducting its inventory of drug samples under proposed § 203.31(d), including an inventory schedule; (4) auditing and detecting falsified or incomplete drug sample records; (5) identifying any significant loss of drug samples and notifying FDA of the loss; (6) monitoring any loss or theft of drug samples; and (7) storing drug samples by representatives.

8. Standing Requests

Both the House Report and Senate Report state that it is the intent of Congress that separate written requests be made each time that samples are requested to be delivered and that standing requests do not fulfill the requirements of the statute, except that the Senate Report states that FDA may provide by regulation for the delivery by mail of a small number of samples for strictly limited periods of time. (H. Rept. 100–76, p. 14; S. Rept. 100–202, p. 6.)

Proposed § 203.35 would require that separate written requests be made for each sample or group of samples and does not allow for open-ended or standing requests to order drug samples.

The proposed section states, however, that the agency does not consider standing requests to include an arrangement by which a licensed practitioner requests in writing that a specified number of drug samples be delivered over a period of not more than 6 months, with the actual delivery dates for parts of the order to be set by subsequent communication.

9. Use of Fulfillment Houses, Shipping and Mailing Services, Other Contractors, and Comarketing Agreements

FDA understands that some manufacturers and distributors employ third parties to meet some of the requirements imposed on them under PDMA. Third parties may include contractors such as fulfillment houses (companies that receive and fill orders), mailing services, and other contractors. In addition, some manufacturers and distributors enter into comarketing agreements in which one manufacturer or its representatives undertake a contractual commitment to provide specified services relating to drug marketing for one or more other manufacturers or distributors. FDA does not regard the use of third parties or entry into comarketing agreements as absolving a manufacturer or distributor from its responsibility for complying with the statute and regulations pertaining to the distribution of its drug samples.

Accordingly, proposed § 203.36 would make clear that a manufacturer or authorized distributor of record that uses a fulfillment house, shipping or mailing service, or other third party to fulfill some of the requirements of PDMA, or engages in a comarketing agreement with another manufacturer, remains responsible for creating and maintaining all requests, receipts, forms, reports, and records required under PDMA, PDA, and proposed part 203.

The agency will give a manufacturer or distributor that contracts with a third

party to maintain some or all of its records up to 48 hours to produce requested forms, reports, records, or other required documents.

10. Investigation and Notification Requirements

In proposed § 203.37, FDA proposes to codify the requirements and procedures for undertaking investigations and making reports and notifications to the agency regarding sample distribution.

a. *Drug sample diversion.* To ensure against drug sample diversion, proposed § 203.37(a) would impose an investigation and reporting requirement on a manufacturer or distributor who has reason to believe that any person has falsified drug sample requests, receipts, or records. A full and complete investigation would have to be undertaken, and the manufacturer or distributor would be required to report to FDA that such an investigation is under way and that it has completed such an investigation. The proposal would require the report to include the reason for the investigation and the results of the investigation.

Because persons who falsify drug sample requests may be prosecuted under Title 18 of the United States Code, and because falsifications are often associated with drug diversion, FDA is proposing to require manufacturers and distributors to report such offenses to the agency.

Accordingly, the proposal would require that a manufacturer or distributor notify the agency of any falsification of drug sample requests, receipts, or records, no later than 5 working days of learning of the falsification. The proposal would permit an initial notification to be made by telephone or in writing, with a complete written report required not later than 30 days after the date of the initial telephone or written notification.

b. *Significant loss and known theft.* PDMA requires a manufacturer or distributor that distributes drug samples to notify FDA of any significant loss of drug samples and any known theft of drug samples (21 U.S.C. 353(d)(3)(D)). FDA believes that enforcement would be facilitated if the manufacturer or distributor promptly notifies the agency upon becoming aware of a significant loss or theft. Accordingly, proposed § 203.37(b) would require a manufacturer or distributor to notify FDA within 5 working days of becoming aware of such a loss or theft.

FDA is proposing in § 203.39 that charitable organizations be permitted to solicit and receive surplus drug samples from licensed practitioners. As part of this program, FDA proposes to require that a charitable institution that receives donated drug samples from a licensed practitioner also be required to notify FDA within 5 working days of becoming aware of a loss or theft.

The reporting of any significant loss of drug samples is critical to the success of diversion control. Although a sample can inadvertently become adulterated through mishandling, spoilage, or exposure to the elements, and although samples are reported as stolen or lost from time to time, some representatives reportedly have used false claims of damage, theft, or loss to divert drug samples into illicit commercial channels.

FDA intends this requirement to mean that the agency is to be advised of actual, physical losses, but not insignificant accounting mistakes. The agency does not seek to receive reports concerning minor mathematical errors that are caught and corrected in the normal course of business. These are not significant losses that would trigger the reporting requirement. FDA seeks comment on how to distinguish between significant losses and minor accounting or inventory errors.

The agency is mindful of the difficulty of establishing a threshold for significant loss and requests comment on this issue and examples of situations that may and may not be appropriate reportable losses. FDA currently believes that a small discrepancy in the total inventory of a multimillion dollar company may not be significant and thus may not trigger the reporting requirement, but the loss of a hundred tablets of a particular drug by one sales representative in one quarter might be significant. Similarly, a bookkeeping imbalance may not be a loss, as long as it represents small inventory discrepancies that are likely to be accounted for in the normal course of audits or other methods of inventory control.

FDA is not proposing to establish any "tolerance" level for sample losses below which no report is required. Each manufacturer or distributor is required to establish its own threshold for determining when inventory not accounted for is significant. This threshold should be derived from the firm's past experience in sample distribution and inventory and should be based on the level of accuracy of its internal audit and security system.

Some manufacturers or distributors might be able to set a historically validated statistical baseline for the minimal amounts of shrinkage that might be caused by routine accounting errors, mistakes, or losses, and a statistical baseline for the frequency of occurrences that might routinely happen with a particular representative or product. However, any loss of drug samples exceeding the number or frequencies of the established baselines must be reported. In addition, any loss possibly associated with falsification of drug sample inventory or distribution records, or connected with diversion activity, suspicious circumstances, or theft must be investigated and reported.

When FDA becomes aware of a significant loss or theft of drug samples, it may conduct its own investigation in cooperation with or independent of the manufacturer's or distributor's investigation.

FDA is proposing that an initial notification of a significant loss or known theft be made by telephone or in writing, with a complete written report required not later than 30 days after the date of the initial notification.

c. *Conviction of a representative.* PDMA requires a manufacturer or distributor to notify FDA of any conviction of its representatives for a violation of section 503(c)(1) of the act or any State law involving the sale, purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample (21 U.S.C. 353(d)(3)(E)).

FDA believes that enforcement would be facilitated if prompt notice of such a conviction is provided to the agency. Accordingly, proposed § 203.37(c)(1) would require a manufacturer or distributor to notify FDA within 5 working days of becoming aware of the conviction of one or more of its representatives for such a violation.

To facilitate such reports, proposed § 203.37(c) would permit an initial notification of such a conviction to be made by telephone or in writing, but would require a complete written report to be submitted no later than 30 days after the date of the initial notification.

d. *Selection of individual responsible for drug sample information.* PDMA requires a manufacturer or distributor who distributes drug samples to provide FDA with the name and telephone number of the individual responsible for responding to a request for information respecting drug samples (21 U.S.C. 353(d)(3)(F)).

FDA believes that enforcement would be facilitated if that information is transmitted to the agency shortly after a designation is made. Accordingly, proposed § 203.37(d) would require a manufacturer or distributor to notify FDA in writing within 30 days of the selection of such an individual and would also require the manufacturer or distributor to supply the individual's

business address to expedite easy communication.

e. *Whom to notify at FDA.* The proposed rule would set forth the addresses to which notifications and reports are required to be made. Under the proposal, reports and notifications are required to be made to the Division of Drug Quality Evaluation (HFD–330), Center for Drug Evaluation and Research, for human prescription drugs; or the Division of Inspections and Surveillance (HFM–650), Center for Biologics Evaluation and Research, for human biological prescription drug products.

11. Sample Lot or Control Numbers

A drug sample is a drug product as defined in 21 CFR 320.1(b). In 21 CFR 201.10(i)(1)(iii) and 201.18 of the general labeling regulations and 21 CFR 211.130(b) of the current good manufacturing practice (CGMP) regulations, the label of drug products is required to bear an identifying lot or control number capable of yielding the complete manufacturing history of the package. Persons subject to the CGMP regulations are required under 21 CFR 211.196 to maintain distribution records containing lot or control numbers.

Maintenance of records of lot numbers on drug samples will help provide the kind of accountability and oversight of prescription drug sample distribution that PDMA is intended to provide. A comment to the docket from the Department of Health and Human Services' Office of the Inspector General not only endorsed this view, but suggested that maintenance of drug sample distribution records, including lot numbers, would be important for enforcement purposes.

Accordingly, proposed § 203.38 would require the manufacturer or authorized distributor of record of drug samples to include in the drug sample labeling, the label of the sample unit, and distribution records identifying lot or control numbers that will permit the tracking of the distribution of each drug sample unit from the point of its manufacture to the representative or, if delivered by mail or common carrier, to the licensed practitioner. (In addition, as discussed earlier, proposed §§ 203.30 and 203.31 also require that drug sample request and receipt forms include lot or control numbers.)

12. Sample Labels

FDA has been advised that some manufacturers and distributors use ordinary stock packages as drug samples. The agency believes that this practice makes it difficult to distinguish samples from ordinary stock and contributes to drug diversion. FDA believes that it is essential that drug samples be clearly and easily recognizable.

Accordingly, proposed § 203.38(c) would require that each sample unit bear a label that clearly denotes its status as a drug sample. An appropriate designation would include (but not be limited to) the word "sample" and the terms "not for sale" and "professional courtesy package." The proposed section would also provide that drug products that are labeled or imprinted as samples are deemed to be drug samples within the meaning of the act.

An article that meets the statutory definition of a drug sample that fails to bear the label required in proposed § 203.38(c) would still be a sample despite the absence of the required label.

13. Disposition of Drug Samples by Licensed Practitioners

PDMA permits manufacturers and distributors to distribute drug samples to licensed practitioners and to hospital or health care entity pharmacies at the request of a licensed practitioner, provided certain documents and records are created and maintained.

PDMA restricts drug sample distribution to "licensed practitioners" and to hospital or health care entity pharmacies at the request of a "licensed practitioner." A number of comments asked FDA to define the term "licensed practitioner." For purposes of proposed part 203, FDA would, in proposed § 203.3(o), define the term "licensed practitioner" to mean any person licensed by State law to prescribe drugs.

Physicians and surgeons, including osteopathic physicians and surgeons, are licensed to prescribe drugs in every State, as are dentists and dental surgeons. In most States, podiatrists and optometrists are licensed to prescribe certain drugs. In some States, pharmacists, physicians' assistants, paramedics, emergency medical technicians, certified nurse practitioners, certified nurse midwives, or other medical professionals or paraprofessionals may be licensed to prescribe drugs, sometimes on their own authority and sometimes on the authority of supervising physicians.

Some States limit the authority to prescribe prescription drugs to specific protocols or formularies for certain professionals or paraprofessionals. For those professionals and paraprofessionals, FDA follows the requirements of those States and considers the authority to request and receive drug samples to be similarly limited.

Section 503(d)(1) of the act provides that no person may distribute any drug sample unless the requirements set forth in paragraphs (d)(2) and (d)(3) of that section are followed. Paragraphs (d)(2) and (d)(3) set forth detailed requirements for manufacturers and authorized distributors of record to follow when they distribute drug samples by mail or common carrier and by representatives.

In the section-by-section analysis that the Senate and House of Representatives ordered to be published in the Congressional Record when PDA was introduced and passed, Congress stated that it did not intend this prohibition to restrict the provision of a drug sample to a patient by a licensed practitioner or by another person at the direction of a licensed practitioner in certain circumstances. (Congressional Record, August 10, 1992, p. S 12061–2; August 12, 1992, p. H 8107–8.) Consequently, in PDA, Congress amended section 503(d)(1) of the act to clarify the prohibition by stating that providing or dispensing a drug sample in certain circumstances is not considered distribution within the meaning of the statute. The clarification specifically excludes from the term "distribute" the provision of a drug sample to a patient by: (1) A practitioner licensed to prescribe such drug, (2) a health care professional acting at the direction and under the supervision of such a practitioner, and (3) the pharmacy of a hospital or of another health care entity that received the drug sample in accordance with the act and regulations, and that is acting at the direction of the health care practitioner who requested the drug sample.

A licensed practitioner who provides a drug sample other than as set forth in section 503(d)(1) of the act is engaging in an act of distribution, and drug sample distributions may be undertaken only as permitted by PDMA.

FDA advises that PDMA and this proposed rule would permit a licensed practitioner to: (1) Dispense the drug sample as set forth in section 503(d)(1) of the act; (2) donate the drug sample to a charitable institution as provided for in proposed § 203.39; (3) return the drug sample to the manufacturer or distributor; or (4) destroy the drug sample.

FDA advises that any person, including a licensed practitioner, is prohibited from carrying out certain distributions of drug samples, including: (1) Selling, purchasing, or trading (or offering to sell, purchase, or trade) any drug sample; (2) requesting a manufacturer or distributor to deliver any drug sample to a retail pharmacy;

(3) delivering any drug sample to a retail pharmacy to be dispensed by the pharmacist to a patient of the licensed practitioner or other persons; (4) giving any drug sample to a retail pharmacy; or (5) donating any drug sample to any charitable institution, except as provided in proposed § 203.39.

PDA singles out dispensing of drug samples by health care professionals who act at the direction and under the supervision of licensed practitioners, and hospital or health care entity pharmacies that receive drug samples in accordance with the act and regulations and that act at the direction of the health care practitioners who request samples. Thus, Congress clearly intended to distinguish these persons from retail pharmacists. The pharmacist in a retail pharmacy is an autonomous professional who is licensed by the State and supervised by the State Board of Pharmacy and independently dispenses drugs to patients in response to a prescription written by a separate licensed practitioner.

A manufacturer or distributor is prohibited from delivering a drug sample to any retail pharmacy, and a retail pharmacy is barred from receiving any drug sample from any person.

FDA has been advised that some licensed practitioners have requested that drug samples be delivered to retail pharmacies in rural, isolated, or medically underserved areas for dispensing to the practitioner's patients. FDA views this practice as being inconsistent with the accountability and oversight requirements imposed on sample distribution by PDMA. The agency believes it makes enforcement of the sample distribution sections difficult, and is a potential source of drug diversion. Accordingly, FDA advises that a practitioner should not request delivery of a drug sample to a retail pharmacy and that a retail pharmacy should not accept a drug sample from a licensed practitioner or from a manufacturer or distributor to be dispensed by the pharmacist to a practitioner's patients or to other persons.

To cut off a potential source of drug diversion and promote enforcement of PDMA, FDA advises licensed practitioners that they should return adulterated or misbranded drug samples to the manufacturer or distributor, or destroy them. Examples of drug samples that may be adulterated or misbranded include, but are not limited to: (1) Samples that have gone beyond the labeled expiration date; (2) samples that are obviously discolored, soiled, spoiled, or otherwise deteriorated; (3) samples with mutilated or damaged packaging; and (4) samples with labeling that is torn, adjusted, or modified.

14. Donation of Drug Samples by Licensed Practitioners to Charitable Institutions

FDA is aware of the practice whereby some licensed practitioners give significant quantities of drug samples to charitable institutions, such as free clinics, charity nursing homes, and charitable health care entities. Donated drug samples are then dispensed by staff of the charitable institutions to patients or given to domestic or overseas missions or other charitable institutions.

Some charitable institutions actively solicit and collect donations of drug samples from licensed practitioners, and it is not uncommon for charitable institutions to rely on donated drug samples as a significant source of prescription drugs for patient care. In response to concerns about this practice, FDA established procedures for drug sample donations in Compliance Policy Guide (CPG) 7132.08, "Collection and Charitable Distribution of Drugs," issued on October 1, 1980.

FDA continues to be concerned about drug sample donations. The agency believes that ongoing donations of drug samples by licensed practitioners to charitable institutions could be considered as being inconsistent with the objectives of accountability and oversight of sample distribution that PDMA is designed to provide. The agency is concerned that this practice could make enforcement of the sample distribution sections difficult and provide an avenue for drug diversion.

One of the principal purposes of PDMA was to prevent drug diversion. The easiest way to ensure that prescription drug samples will not be diverted by charitable institutions would be to prohibit such institutions from possessing them. However, Congress did not choose to do so. Indeed, PDMA explicitly allows prescription drug samples to be delivered by a manufacturer or distributor to the pharmacy of a hospital or health care entity at the written request of a licensed practitioner. Such a hospital or health care entity may be operated for profit or as a charitable institution. PDMA is silent, however, as to whether or not there are other legitimate means by which a charitable institution can acquire prescription drug samples.

The operations of not-for-profit hospitals, health care entities, and charitable institutions were closely scrutinized by Congress before the passage of PDMA. Congress identified sales of drugs acquired at below-wholesale prices by hospitals, health care entities, and charitable institutions as a source of unfair competition for prescription drug wholesalers who are required to pay the average wholesale price, and suggested that such sales could be a source of drug diversion. (See sec. 2(7), PDMA.)

Congress also identified the sale of prescription drug samples as a source of diversion (see sec. 2(6), PDMA), but did not suggest that charitable institutions were peculiarly likely to engage in this abuse. Instead, Congress sought to balance the need for restrictions that would prevent unfair competition and put an end to diversion of prescription drug samples with the goals of providing prescription drugs to all who need them and permitting the distribution, with appropriate restrictions, of prescription drug samples to patients.

Congress did not alter this balance when in PDA, it revised the PDMA sample distribution restrictions.

FDA has preliminarily concluded that development of a system that would permit licensed practitioners to donate excess quantities of prescription drug samples to charitable institutions for dispensing to patients or for further distribution to domestic or overseas charitable institutions for dispensing to patients would be consistent with PDMA, PDA, and the goal of providing adequate medical care to patients in need.

A system that would permit such donations with adequate restrictions would ensure wider opportunities for the provision of medical care, including prescription drugs, to patients in need, and would, if appropriate controls were established similar to those governing sample distribution, be consistent with the language and intent of the statute. Controls would serve the objectives of accountability and oversight in the act and minimize the potential for drug diversion.

Such a system would also prevent the waste of significant quantities of valuable prescription drugs that have been distributed as drug samples to licensed practitioners who have not used or dispensed them.

FDA believes that such a system should contain audit and security protection, similar to those required in the statute for requesting drug samples from manufacturers or distributors and delivering them to licensed practitioners, to provide accountability and oversight, and to protect the public against drug diversion.

In designing such a system, the agency has kept in mind that the day-

to-day operations of licensed practitioners, including the provision of prescription drugs to patients, are regulated primarily by the States. In addition, there is nothing in the legislative history of PDMA or PDA that would suggest that Congress intended FDA to become more deeply involved in the regulation of the activities of licensed practitioners, except to the extent necessary to ensure that drug samples are not diverted and that they do not, as a result, become adulterated or misbranded.

Accordingly, the agency is proposing to establish a system of drug sample donation controls in proposed § 203.39. Proposed § 203.39 would set up a system that would permit a licensed practitioner to donate a drug sample to a charitable institution for dispensing to a patient of that institution or for distribution to another properly enrolled charitable institution for subsequent dispensing to patients, provided that the institution is properly enrolled and certain requirements are met.

Under proposed § 203.39, a charitable institution that wishes to solicit or receive drug samples would be required to: (1) Become properly enrolled by notifying the agency of its intention to solicit and receive drug sample donations and obtaining a central file number; and (2) maintain records of drug samples received as donations and subsequently dispensed or distributed to other charitable institutions.

A recipient charitable institution must provide written certification of compliance with all regulations to a licensed practitioner or charitable institution that provides a drug sample before receiving any drug sample donation.

Under the proposal, the charitable institution or organization (defined as one that has been granted tax exempt status by the Department of the Treasury under the requirements of section 501(c)(3) of the Internal Revenue Code of 1954) would be required to enroll with FDA. A charitable institution would be enrolled when it has notified the appropriate FDA district office that it intends to solicit and receive drug samples, has made application to the district office for a central file number, and has received the number. A charitable institution would also be required to be licensed by the State, if required by State law, and otherwise conform to State law.

Proposed § 203.39(b) would establish procedures that the charitable institution would be required to follow for receiving, holding, dispensing, and distributing donated drug samples. These requirements closely parallel the statutory and proposed regulatory requirements for request and delivery of drug samples by manufacturers and distributors to licensed practitioners.

Under proposed § 203.39(b)(1), a recipient charitable institution would be required to provide a written identification document to any employee or agent authorized to act on behalf of the institution in soliciting or receiving donations of prescription drug samples. The employee or agent identification document would be valid for a limited term, but could be renewed.

FDA is not proposing to delineate the form and content of the required identification document, but it should be sufficient to readily identify the agent or employee of the charity and to establish that he or she has the authority to solicit and receive drug sample donations.

Such an identification document would be acceptable to the agency, for example, if it: (1) Would be effective for a fixed term, e.g., 1 year, and would bear an expiration date; (2) would include the name, address, and central file number of the charitable institution; (3) would exhibit the name, signature, and photograph of the authorized employee or agent; and (4) would display an affirmative statement that the employee or agent identified on the document is authorized by the institution to solicit and receive donations of prescription drug samples on behalf of the institution.

Proposed § 203.39(b)(2) would require each recipient charitable institution to maintain a current listing of all agents or employees authorized to solicit and receive drug samples on behalf of the institution. The listing would also be required to include the name and telephone number of the authorized agent or employee in charge of prescription drug sample solicitation, receipt, and redistribution.

One problem associated with drug sample diversion has been the practice of "shucking" drug samples (separating drug sample dosage units from their sample packaging (usually blister packs, cards, or small boxes) and sample labeling) and repackaging them (often in plastic bags or "baggies," or in other nonstandard containers with other sample dosage units from the same or different drug sample lots or production runs). This repackaging process may be accompanied by physical tampering with the sample dosage units with sharp or abrasive instruments or with solvents to remove imprints denoting their status as samples. Because this practice adulterates and misbrands the samples, proposed § 203.39(b)(3) would require that a drug sample could be donated by a licensed practitioner or donating charitable institution and could be received by a charitable institution only in its original, unopened packaging with its labeling intact.

Proposed § 203.39(b)(4) would permit delivery of a donated drug sample to a recipient charitable institution by mail or common carrier, collection by an authorized agent or employee of the recipient charitable institution, or personal delivery by a licensed practitioner or an authorized agent or employee of the donating charitable institution. It would direct that the donor place the donated drug samples in a sealed carton for delivery to or collection by the recipient institution.

Under proposed § 203.39(b)(5), a donated drug sample could not be dispensed to a patient or be distributed to another charitable institution until a licensed practitioner or registered pharmacist at the recipient charitable institution has examined it to confirm that the drug sample delivered matches the donation record and that any adulterated or misbranded drug sample is eliminated. The recipient would be required to reject any drug sample that: (1) Is out of date; (2) has labeling that has become mutilated, obscured, or detached from the drug sample packaging; (3) shows evidence of having been stored or shipped under conditions that might adversely affect its stability, integrity, or effectiveness; (4) is for a drug product that has been recalled or is no longer marketed; or (5) is otherwise possibly contaminated, deteriorated, or adulterated.

Proposed § 203.39(b)(6) would require recipient charitable institutions to dispose of any drug sample found to be unsuitable by destroying it or by returning it to the manufacturer and to maintain complete records of the disposition of all drug samples destroyed or returned.

Proposed § 203.39(b)(7) would require that, if a donated drug sample is collected by an authorized agent or employee of the recipient charitable institution or is personally delivered by a licensed practitioner or an authorized agent of a donating charitable institution, the employee or agent of the recipient institution is to prepare at the time of collection or delivery a complete and accurate donation record for the samples. Both the donor and recipient would be required to sign the donation record when it is created, and the donor and recipient would each retain a copy.

If a donated drug sample is transferred by mail or common carrier, the licensed practitioner or donating

charitable institution would be required to prepare a donation record that would be signed by the licensed practitioner or authorized agent of the donating charitable institution (§ 203.39(b)(8) and (b)(9)). The donation record would be shipped with the drug sample. An authorized agent or employee of the recipient charitable institution would be required to countersign it, keep a copy, and return a copy to the licensed practitioner or donating charitable institution.

Proposed § 203.39(b)(9) would require the donation record to include: (1) The name, address, and telephone number of the licensed practitioner (or donating charitable institution), and the practitioner's professional title and State license number or DEA identification number; (2) the manufacturer, brand name, quantity, and lot or control number of the sample; (3) the date of the donation; (4) the signature of the licensed practitioner (or the signature of the authorized agent of the donating charitable institution); and (5) the signature of the authorized agent or employee of the recipient charitable institution.

The proposal would require charitable institutions to maintain complete and accurate records of donation, receipt, inspection, inventory, dispensing, redistribution, destruction, and returns sufficient for complete accountability and auditing of drug sample stocks (§ 203.39(b)(10)).

It would also require each recipient charitable institution to conduct an inventory of drug sample stocks, at least annually, utilizing independent inventory personnel, and to prepare a report reconciling the results of each inventory with the most immediate prior inventory. Inventory discrepancies and reconciliation problems would be required to be investigated by the charitable institution and reported to FDA (§ 203.39(b)(11)).

Proposed § 203.39(b)(12) would require that a recipient charitable institution provide written certification to the licensed practitioner or donating charitable institution that it is in conformity with all the requirements of proposed part 203 before receiving any drug sample donation. Such certification, which links the licensed practitioner with the charitable institution, could be made part of the donation record.

Proposed § 203.39(b)(13) would require a recipient charitable institution to store drug samples under conditions that will maintain the samples' stability, integrity, and effectiveness, and ensure that the drug samples will be free of contamination, deterioration, and adulteration.

Proposed § 203.39(c) would also specify that a charitable institution may donate drug samples to another recipient charitable institution for dispensing to patients, provided that the recipient charitable institution meets the appropriate requirements.

In addition to the procedure for drug sample donations delineated in proposed § 203.39, there are alternative means available for charities to receive donated prescription drug products from manufacturers and distributors. These include: (1) Direct donations of prescription drug stock by manufacturers or distributors, with records of distribution and receipt being maintained in accordance with State regulations; and (2) deliveries of drug samples to charity hospital and health care entity pharmacies by manufacturers and distributors or their representatives under the request of a licensed practitioner in accordance with the requirements set forth in proposed §§ 203.30 and 203.31.

15. Free Distributions That Are Not Samples

There are certain situations in which manufacturers and distributors may deliver prescription drugs at no charge without such free distributions being samples. Accordingly, such distributions are not subject to the recordkeeping requirements for samples. Nevertheless, FDA believes that States and manufacturers and distributors should establish recordkeeping requirements and systems, where appropriate, to prevent diversion.

a. *Distribution of drugs to indigent patients.* As noted above, a drug sample is defined at proposed § 203.3(i) as a unit of a prescription drug that: (1) Is not intended to be sold; and (2) is intended to promote the sale of the drug. Drugs that are given free of charge to patients in some circumstances may not necessarily be samples. For example, manufacturers of some expensive new drugs have decided that, under certain circumstances, they will arrange for licensed practitioners to prescribe and dispense these drugs at no charge or at reduced cost to indigent patients. In FDA's view, if the objective of this practice is to ensure that patients in need of prescription drugs will have access to them, whatever their financial circumstances, then it is not a promotional scheme, and such drugs are not samples under section 503(c)(1) of the act or proposed § 203.3(i).

b. *Starter packs.* Starter packs are also not drug samples. Starter packs are prescription drug products distributed without charge by manufacturers or distributors to pharmacists with the intent that the pharmacists place the prescription drugs in stock and sell them at retail. Starter packs may be distributed by manufacturers' or wholesale distributors' representatives (detailers), by mail or common carrier, or by direct delivery from a manufacturer or distributor. Starter packs of solid oral dosage forms can be offered in ordinary stock packages, in special packaging comprised of unit-of-use or course-of-treatment sizes, or in special packaging smaller than standard stock packages whose sizes have no relationship to treatment regimens.

Starter packs are intended to "prime the pump" by making a product available at no cost to the pharmacist so the pharmacist will fill prescriptions with the manufacturer's product. They permit the patient and pharmacist to become familiar with the manufacturer's product. Starter packs are a widely used selling tool and thus are intended to promote the sale of the drug. Representatives often will make a sales presentation before delivering them or at the same time they are delivered.

PDMA's definition of drug sample sets up a two-element test that determines whether a particular item of prescription drug is a drug sample. The two-element test requires that the drug: (1) Is not intended to be sold; and (2) is intended to promote the sale of the drug. Starter packs meet the second element of the drug sample test because they are intended to promote the sale of a particular drug. However, even though starter packs are delivered without charge to pharmacists, they do not conform to the first element of the statutory drug sample definition because the manufacturer or distributor intends that they be sold by the pharmacist. Accordingly, starter packs are not samples.

Because starter packs are not samples, they are not subject to the sample restrictions in PDMA. Instead, they are subject to regulation as prescription drugs under the act in like manner as stock shipments of prescription drugs. Because starter packs are not drug samples, the request, receipt, and recordkeeping requirements in PDMA for samples do not apply, and pharmacists are free to sell these products at retail.

Because starter packs provide opportunities for diversion similar to those presented by drug samples, manufacturers, and distributors should establish and maintain accounting, audit, and security systems for starter packs to guard against diversion.

c. *Pharmacy colleges.* For many years, manufacturers have given pharmacy schools and colleges pharmaceutical products for teaching purposes. These products are given to help the schools train pharmacy students in drug formulation, compounding, packaging, and labeling, and to familiarize students with dosage forms. These products are not intended to be distributed or dispensed, nor are they intended to promote the sale of the drug. Accordingly, the agency does not view prescription drugs donated to colleges of pharmacy for educational purposes as drug samples.

d. *Donations of drugs to charitable institutions.* There is nothing in PDMA or in the legislative history of PDMA that would suggest that PDMA is intended to discourage direct donations by manufacturers or distributors of stock packages of prescription drug products to charitable institutions. Because these donations provide patients with the prescription drugs they need without regard to cost and are not intended to promote the sale of the drug, the distributions are not sample distributions within the meaning of section 503(c)(1) of the act or proposed § 203.3(i).

16. "Bid" and "Commercial" Samples

Manufacturers of drug products sometimes take delivery of bulk drug ingredients or precursor specimens for testing and evaluation purposes. These specimens are scrutinized for compatibility with a manufacturer's production equipment and to determine if they are suitable for use in formulating the drug products the manufacturer wishes to produce. Sometimes, manufacturers take delivery of examples of unpackaged finished dosage forms to determine if they are suitable for use with the manufacturer's packaging materials and equipment. These specimens, referred to as "bid" or "commercial" samples, are generally delivered in limited quantities for evaluation purposes.

The act defines a drug sample as a unit of a drug subject to section 503(b) of the act (i.e., a prescription drug), which is not intended to be sold and is intended to promote the sale of the drug (21 U.S.C. 353(c)(1)). Proposed § 203.3(i) restates this definition. Because of the statutory language and the threat of diversion, persons who distribute "bid" or "commercial" samples should follow the requirements for sample distribution set forth in the act and this proposed rule.

17. Retail Pharmacists and Drug Samples

Proposed § 203.40 would provide that the presence in a retail pharmacy of any drug sample shall be considered evidence that the drug sample was obtained by the retail pharmacy in violation of section 503(c)(1) of the act.

E. Wholesale Distribution

1. Identifying Statements ("Pedigrees")

Section 503(e)(1) of the act imposed a new requirement on "unauthorized" or "secondary" wholesale prescription drug distributors (wholesale drug distributors who are not authorized distributors of record) to provide to a wholesale distributor purchaser, before the completion of a sale, a statement identifying each sale of the drug (often referred to as a "statement of origin" or "drug pedigree"). PDA expanded this requirement by specifying the information to be included in the drug pedigree and mandating that it be provided to retail pharmacy buyers as well as wholesale distributor purchasers.

The pedigree requirements for unauthorized distributors under PDMA, as later amended by PDA, have been a matter of continuing interest and discussion. These requirements affect only unauthorized wholesale distributors (i.e., those who do not have an ongoing business relationship with a manufacturer to distribute that manufacturer's drugs) and impose upon them more stringent requirements than are imposed on authorized distributors of record.

Before passage of PDA, section 503(e)(1) of the act required that each person engaged in the wholesale distribution of drugs subject to section 503(b) of the act (prescription drugs) who is not an authorized distributor of record of such drugs provide to each wholesale distributor of such drugs a statement identifying each sale of the drug, including the date of the sale, before the sale to such wholesale distributor. Soon after the enactment of PDMA, the terms "secondary" and "unauthorized" distributors became common to describe persons who are not authorized distributors of record, and the term "drug pedigree" became popular to describe the required statement of origin.

In order to make it possible to distinguish between authorized and unauthorized distributors, section 503(e)(1) of the act also required each manufacturer to maintain at its corporate offices a current list of its authorized distributors. This requirement was not altered by PDA, which otherwise amplified the pedigree requirement.

When Congress adopted section 503(e)(1) of the act, it was responding to information uncovered by the Oversight Subcommittee of the House Committee on Energy and Commerce. The Committee found that most counterfeit, stolen, expired, or fraudulently obtained drugs entering commercial channels had been handled by distributors who were not authorized to distribute the manufacturer's product, rather than by the manufacturer's authorized distributors. Accordingly, Congress imposed a more stringent reporting requirement on distributions by unauthorized distributors, requiring them to inform their wholesale customers of all previous sales of the drug product. (H. Rept. 100–76, p. 17.)

A number of comments to the agency after enactment of PDMA reflected concerns about application of the drug pedigree requirement. One comment asked FDA to consider whether the drug pedigree must include the name and address of the seller, or whether a general statement, such as "this shipment of drugs came from an unnamed authorized distributor on _____ ——, 199—," or a coded statement, such as "this shipment of drugs came from unauthorized distributor [code] on _____ ——, 199—," would comply with PDMA.

The agency stated its position on the form and content of the drug pedigree requirement in PDMA in a section of the August 1, 1988, information and guidance letter to regulated industry and other interested parties. The August 1, 1988, letter requested that any drug pedigree be in writing, that it bear the title "Statement Identifying Prior Sales of Prescription Drugs by Unauthorized Distributors Required by the Prescription Drug Marketing Act," and that it include all necessary identifying information regarding all sales in the chain of distribution of the product, starting with the manufacturer or authorized distributor of record. The agency believed that this was consistent with the legislative history of PDMA, which indicated that Congress intended that the drug pedigree be a written certification fully identifying the source and place from which the drugs were obtained. (H. Rept. 100–76, p. 17; S. Rept. 100–202, p. 7.)

In the August 1, 1988, letter, the agency requested that the identifying statement include the following information: (1) The business name and address of the source from which the drug was purchased; (2) the date of the sale; and (3) the identity, strength,

container size, number of containers, and lot number(s) of the drug. FDA also requested that the drug pedigree accompany all products purchased from an unauthorized distributor, even when they are resold.

Late in 1988, the American Association of Pharmaceutical Distributors (AAPD), an organization of wholesale prescription drug distributors who are not authorized distributors of record for some or all of the products they distribute, designed a form for drug pedigrees that substituted codes for names and addresses. AAPD's system, which is now reportedly being used by its members and certain nonmembers, is administered by an accountant employed by AAPD for that purpose. The agency does not know if other code systems exist that are being used in place of the required names and addresses on drug pedigrees.

In the months following passage of PDMA, some Senators and members of Congress wrote to support coded pedigrees or pedigrees that did not disclose full names and addresses. However, others expressed their support for full disclosure on drug pedigrees.

Even before passage of PDA, FDA considered that Congress had intended the PDMA drug pedigree requirement to require that each party in a chain of distribution be given sufficient information to make an informed determination as to the origin of drugs being purchased. In the agency's view, general statements of origin could not provide sufficient information for purchasers, and coded statements that made information unintelligible to purchasers without the intervention of a trade association or regulatory agency to decipher the code, would not provide purchasers with the information that Congress intended that they receive. In FDA's opinion, the only meaningful way to identify the "source and place" from which drugs were obtained was to require that the identifying statement bear the business name and address of each previous distributor and the date of each prior sale. Furthermore, the only meaningful way to identify fully the drugs being described was to provide detailed particulars about the drugs being sold. FDA has stated this position in a number of letters, speeches, and public comments since PDMA became law.

The PDA amendments to the PDMA significantly tightened the drug pedigree requirement and constitute Congress' latest word on the issue. PDA amended section 503(e)(1) of the act to require that unauthorized distributors provide, before a sale takes place, a drug pedigree to every wholesale distributor or retail pharmacy customer. The drug pedigree is required to identify all prior sales, purchases, or trades of such drugs and to specify by name and address all parties to the transactions. PDA also states that FDA may require additional information or a specific form for the drug pedigree.

As Congress stated in the section-by-section analysis that accompanied PDA when it was introduced and passed, the stricter language in the PDA revision "makes it clear" that any wholesale distribution of a prescription drug by an unauthorized distributor, including any sale to another unauthorized distributor, an authorized distributor of record, or a retail pharmacy, must be preceded by a full and complete identifying statement. "The identifying statement," the analysis added, "must in all cases include the dates of each transaction involving the drug and the names and addresses of all parties to the transaction, and must contain any such other information as the Secretary may require." (Congressional Record, page S 12061, August 10, 1992; page H 8107, August 12, 1992.)

Passage of PDA thus gave added emphasis to Congress' intent, as stated in the legislative history of PDMA, to restore accountability to the wholesale sector of the pharmaceutical market and to regulate the wholesale distribution of prescription drug products. (H. Rept. 100–76, pp. 16–17; S. Rept. 100–202, p. 7.)

Proposed § 203.50(a) would restate the statutory requirement that, before the completion of any wholesale distribution by an unauthorized wholesaler to another wholesale distributor or retail pharmacy, the seller is required to provide to the purchaser a statement identifying each prior sale, purchase, or trade of such drug. It would require that the drug pedigree include: (1) The proprietary and established name of the drug; (2) the dosage; (3) the container size; (4) the number of containers; (5) the drug's lot or control number(s); (6) the business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer; and (7) the date of each previous transaction involving the drug.

2. Additional Manufacturing Processes

A manufacturer applies at least one manufacturing process to a bulk drug substance or precursor product to produce a finished dosage form or a precursor product that will be further manufactured into a finished dosage form. Each of these processes produces a changed product. Accordingly, proposed § 203.50(b) specifies that a manufacturer who subjects a drug to any additional manufacturing processes to produce a different drug is not required to provide to a purchaser a statement identifying the previous sales of the component drug or drugs.

3. Authorized Distributor Lists

Proposed § 203.50(c) would require each manufacturer to maintain at the corporate offices a current written list of all authorized distributors of record. The term "authorized distributor of record" is defined in proposed § 203.3(b) to mean a distributor with whom a manufacturer has established an ongoing relationship to distribute such manufacturer's products. Because an agreement by which a single shipment of drugs is distributed would not constitute an ongoing relationship (see proposed § 203.3(r)) that shipment would not establish an "authorized distributor of record" relationship.

The proposal would also require the manufacturer's list to specify whether each distributor listed is authorized to distribute the manufacturer's full product line, or only particular, specified products. The proposal would also require the manufacturer to update the list on a continuing basis.

In the PDMA legislative history, Congress stated that manufacturers' lists of authorized distributors of record should be freely available to the public. Accordingly, FDA is also proposing that each manufacturer make its list of authorized distributors of record available on request to the public for inspection and copying.

4. Unknown Origins or "Salvaged" Drugs

A number of comments inquired about persons that purchase lost or abandoned drugs from transportation companies for sale to licensed wholesale distributors. This procedure is sometimes referred to as drug salvage, although it differs from the process identified as salvaging in 21 CFR part 211. These inquiries suggested that identifying statements for "salvaged" drugs should list the transportation company from which the drugs were "salvaged" as the point of origin.

FDA believes that this kind of business operation cannot meet the requirements of the CGMP regulations, nor can it operate in a manner consistent with PDMA's requirements (e.g., that a wholesale distributor give a wholesale distributor purchaser a statement of origin for the product being sold).

FDA's view is that the requirement for a statement of origin is designed to permit prospective purchasers to

determine if the source of a drug is a legitimate source, such as an authorized distributor or secondary distributor licensed by the State as a wholesale distributor. The agency believes that an "origin unknown" statement or a statement that a particular shipment of prescription drugs originated as "salvage" or that they came from a lost shipment from unknown persons at an unknown time would not be consistent with the meaning of that provision. Thus, in FDA's view, use of an "origin unknown" or "salvage" statement would not meet the requirement for an identifying statement under section 503(e)(1) of the act.

5. State Licensing of Wholesale Distributors

PDMA established a requirement that any person engaged in the wholesale distribution in interstate commerce of prescription drugs in a State be licensed by the State in accordance with guidelines issued as a final rule by the agency (21 U.S.C. 353(e)(2)). The final rule that set forth guidelines for State licensing of wholesale prescription drug distributors was published in the **Federal Register** of September 14, 1990 (55 FR 38012), making the requirement that any person engaging in the wholesale distribution of prescription drugs in interstate commerce shall be licensed by the State in which it operates, become effective September 15, 1992.

However, Congress passed PDA, which modified the State licensing requirement, before the date on which the requirement would have gone into effect. PDA amended section 503(e) of the act to establish a temporary Federal registration procedure for wholesale prescription drug distributors in those States that do not have a licensing program that meets the Federal guidelines.

This temporary Federal wholesale distributor registration procedure expires on September 14, 1994. After that date, all persons engaged in the wholesale distribution of prescription drugs in interstate commerce are required to be licensed by the State.

FDA issued a letter to industry and other interested persons on September 3, 1992, that provides information and guidance on the procedure to be followed by wholesale distributors required to register under the temporary Federal wholesale distributor registration procedure established by PDA. (See the **Federal Register** of December 2, 1992 (57 FR 57068).)

6. Defining "Wholesale Distribution"

The term "wholesale distribution" is defined in section 503(e)(4)(B) of the act as distribution of prescription drugs to other than the consumer or patient, but not including intracompany sales or distributions of drugs described in section 503(c)(3)(B) of the act. The exclusions under section 503(c)(3)(B) of the act are for the purchase or other acquisition by a hospital or other health care entity member of a group purchasing organization of a drug for its own use from the organization or from other hospitals or health care entity members of the organization; the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by law; the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities under common control; the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; and the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription executed in accordance with section 503(b) of the act.

These exclusions are part of the proposed definition of "wholesale distribution" in proposed § 203.3(y).

For clarity, FDA proposes to codify additional exclusions in proposed § 203.3(y) that have already been discussed in this notice. They are the distribution of drug samples by manufacturers' and authorized distributors' representatives; the sale, purchase, or trade of blood and blood components intended for transfusion; drug reshipments, when conducted in accordance with proposed § 203.23; and drug returns, when conducted in accordance with proposed § 203.24.

In addition, as discussed below, FDA is proposing to codify an exclusion from the definition of wholesale distribution for the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use.

For consistency, FDA is also proposing to incorporate these additional exclusions in the definition of "wholesale distribution" at § 205.3(f).

7. Sales to Licensed Practitioners by Retail Pharmacies

In general, a retail pharmacy that engages in the business of selling prescription drugs to licensed practitioners is a wholesale distributor that, since September 15, 1992, has been required to be licensed by the State as a wholesaler or registered with FDA if the State does not have a conforming licensing program.

Licensed practitioners often purchase small quantities of drugs from retail pharmacies for office use. Many wholesale distributors are reluctant to open accounts with individual practitioners for small quantities of drugs, and some practitioners believe that there is no cost-effective, reasonable alternative for making occasional purchases of small quantities of drugs for office use.

The legislative history supports the view that Congress did not intend to interfere with this small-scale practice. According to the House Report, "It is the express intent of the Committee that the scope of section 6 include distribution by * * * all sellers of prescription drugs in wholesale quantities to persons or firms other than the consumer or patient." (H. Rept. 100–76, p. 17.)

FDA believes that permitting the sale of small quantities of prescription drugs by retail pharmacies to licensed practitioners for office use without the requirement of a State wholesale distributor's license satisfies a legitimate need and is consistent with the intent of the statute. Accordingly, the agency has included language in proposed § 203.3(y) that would exclude the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use from the definition of "wholesale distribution."

In this context, sales of prescription drugs by a retail pharmacy to licensed practitioners for office use will be considered to be minimal if the total annual dollar volume of prescription drugs sold to licensed practitioners does not exceed 5 percent of the dollar volume of that retail pharmacy's annual prescription drug sales.

If a retail pharmacy is engaged in wholesale sales of prescription drugs in any amount after September 15, 1992, the presumption will be that the retail pharmacy is, in fact, a wholesale distributor that must be licensed by the State in accordance with part 205, or registered with FDA if the State does not have a conforming licensing program, unless it can be shown that the total annual dollar volume of its sales to licensed practitioners does not exceed 5 percent of the dollar volume of that pharmacy's annual prescription drug sales and the pharmacy does not otherwise engage in wholesale distribution.

8. Sales to Wholesale Distributors by Retail Pharmacies

FDA received a number of questions asking whether PDMA prohibits a retail pharmacy from selling prescription drugs to a wholesale distributor. FDA advises that there is no provision in PDMA, the final PDMA State licensing guidelines, or this proposed rule that would prohibit a retail pharmacy from selling prescription drugs to a wholesale distributor. However, a retail pharmacy that engages in such sales would become a wholesale distributor that would be required to provide the wholesale distributor purchaser with an identifying statement for the drugs sold and would be required to have a valid State wholesale distributor license or be registered with FDA if the State does not have a conforming licensing program.

F. Request and Receipt Forms, Reports, and Records

Proposed § 203.60 sets forth standards for request and receipt forms, reports, and for the creation, retention, and maintenance of records and other documents under proposed part 203. These requirements, although procedural in nature, are essential for the efficient administration and enforcement of PDMA and proposed part 203.

1. Recordkeeping Media

FDA is proposing that manufacturers and distributors have the option of creating or maintaining records on nonpaper media. FDA believes that recent technological advances compel the agency to reexamine how the requirements for written records (including forms bearing written signatures) can be satisfied by electronic media. FDA believes that greater efficiency, lower costs, and more effective enforcement can result from an effort to facilitate the development and use of photographic, electronic, and other nonpaper devices, and media for creation and maintenance of sample requests, receipts, records, and other forms.

Accordingly, proposed § 203.60(a) would permit request and receipt forms, reports, records, and other documents required by PDMA, PDA, and this proposed rule to be created on paper or on electronic media.

Proposed § 203.60(b) would permit request and receipt forms, reports, records, and other documents required by PDMA, PDA, and this proposal that are created on paper to be maintained on paper or by photographic or electronic recordation or imaging, provided that appropriate security and authentication requirements are followed.

Proposed § 203.60(c) would permit request and receipt forms, reports, records, and other documents required by PDMA, PDA, and this proposal that are created by means of electronic data entry and recordkeeping equipment to be stored using computer technologies, provided that appropriate security and authentication requirements are followed.

Under this proposal, appropriate photographic records and electrographic records could include, but not be limited to, those maintained on microfilm, microcard, microfiche, and xerographic copies. Appropriate electronic records could include, but not be limited to, those maintained in analog or digital form or by means of image recording technology on computer disks, cards, tapes, memory chips, or optical media.

2. Security and Authentication Requirements for Request and Receipt Forms, Reports, Records, and Other Documents

The proposed rule would require that any request or receipt form, report, record, or other document, and any signature appearing thereon, is to be created, maintained, or transmitted in a form that provides reasonable assurance of being: (1) Resistant to tampering, revision, modification, or alteration; (2) preserved in accessible and retrievable fashion; and (3) visible or readily made visible to permit copying or other means of duplication for purposes of review, analysis, verification, authentication, and reproduction by the person who executed the form or created the record, by the manufacturer or distributor, and by authorized personnel of FDA or other regulatory and law enforcement agencies.

3. Retention of Request and Receipt Forms, Reports, Lists, Records, and Other Documents

The proposed rule also sets standards for the retention of request and receipt forms, reports, lists, records, and other documents. PDMA requires the retention of certain records for not less than 3 years. FDA believes that, with one exception, the 3-year minimum requirement should be extended to all records created and maintained under the statute and the proposed rule to ensure efficient enforcement and compliance operations. Accordingly, the proposal would state that any person required to create or maintain forms, reports, lists, or other records under the statute or regulations would have to retain them for at least 3 years after the date of their creation.

The agency believes that a more stringent standard is necessary for the retention of records relating to drug sample distribution because some drug samples are relatively stable and may remain unexpired even though 3 or more years may have elapsed since they were packaged and shipped. Accordingly, the proposal would require that forms, reports, or records relating to the distribution of drug samples be retained for at least 3 years after the date of the record's creation or the date of expiration of a drug sample for which the record is being kept, whichever is later.

4. Availability of Forms, Reports, Lists, and Records

Forms, reports, lists, or other records are of little value to FDA or other regulatory and law enforcement agencies, unless they are readily available for inspection and copying. Accordingly, the proposal would compel any person required to create or maintain forms, reports, lists, or other records under PDMA, PDA, or the proposed rule to make them available upon request, in a form that permits copying or other means of duplication, to FDA or other Federal, State, or local regulatory and law enforcement officials for review and reproduction.

5. Signatures on Forms, Reports, or Records

By affixing a signature to a document, the person who signs it is giving his or her personal verification of the validity of a document. For example, by affixing a signature to a drug sample request form, the person signing it attests to the fact that he or she is a licensed practitioner and that he or she has requested delivery of a specific amount and type of drug sample. Similarly, a signature on a receipt verifies the delivery of the drug samples to the licensed practitioner or to the pharmacy of a hospital or other health care entity.

FDA has preliminarily concluded that a valid signature need not be made by pen or indelible pencil on a piece of paper. Instead, the agency believes that in certain circumstances a valid signature can be created and recorded by electronic means.

Accordingly, under proposed § 203.61 a verifiable signature may be made by use of a writing or marking instrument such as a pen, indelible pencil, or electronic stylus on electronic pad. Because some imprinting or copying devices can be used to forge or falsely imprint a signature, and because false signatures and forgeries could be an

integral part of a drug diversion scheme, the proposal would prohibit imprinting or automatic reproduction of a signature by a device or machine such as a stamp, copier, or autopen.

Proposed § 203.61 would establish performance standards and special security requirements for signatures signed on electronic media. Proposed § 203.61(b) would require that if electronic media are used to execute and record signatures, it must be installed and operated with: (1) A system permitting visual review of the signature; (2) a system to detect or inhibit entry of a forged, traced, fraudulent, or counterfeit signature, i.e., authentication software; and (3) a mechanism that blocks alteration of documents or signatures after the signatures are made, i.e., a locking device.

Persons interested in commenting on electronic records and electronic signatures should be aware that an agency task force, the FDA Electronic Identification/Signature Working Group, is currently assessing issues relating to electronic signatures and recordkeeping. In the **Federal Register** of July 21, 1992 (57 FR 32185), FDA published an advance notice of proposed rulemaking (ANPRM) entitled "Electronic Identification/Signatures; Electronic Records; Request for Information and Comments." The notice stated that the agency is considering whether it should propose regulations that would, under certain circumstances, accept electronic signatures in place of handwritten signatures where signatures are currently required in Title 21 of the Code of Federal Regulations and is asking for comments on any related issues. Comments were to be identified with Docket No. 92N–0251. The working group has reviewed the comments in the docket and the agency is considering additional action. The agency's emerging position on electronic signatures and records will be coordinated with the final PDMA policies requirements and administrative procedures rule. Suggestions on electronic signatures and other signature substitutes and surrogates made to FDA in response to this proposed rule will also be made available to the working group force for its review.

G. Penalties and Rewards

1. Criminal Penalties

Most violations of the act are punishable as misdemeanors, except that a violation committed after a prior conviction, or a violation committed with the intent to defraud or mislead, is punishable as a felony. In addition, FDA advises that persons who knowingly make any false, fictitious, or fraudulent statements or representations, or knowingly make or use any false writing or document, in any matter within the jurisdiction of a Federal department or agency; who engage in mail fraud or wire fraud; or who otherwise obstruct agency regulatory activities may be subject to prosecution under Title 18 of the United States Code.

Most PDMA violations are felonies punishable by a prison term of not more than 10 years, a fine of not more than $250,000, or both. Felonies under PDMA include the knowing importation of a drug in violation of section 801(d)(1) of the act; the knowing sale, purchase, or trade of a drug or drug sample, or the knowing offer to sell, purchase, or trade a drug or drug sample in violation of section 503(c)(1) of the act; the knowing sale, purchase, or trade of a drug coupon; the knowing offer to sell, purchase, or trade a drug coupon, or the knowing counterfeiting of such a coupon in violation of section 503(c)(2) of the act; or the knowing distribution of drugs in violation of section 503(e)(2)(A) of the act. Misdemeanors include the distribution of a drug sample in violation of section 503(d) of the act and the failure to comply with the "pedigree" requirement of section 503(e)(1)(A) of the act.

2. Civil Penalties

PDMA also includes provisions for civil penalties for certain violations of the drug sample distribution requirements.

A manufacturer or distributor who distributes drug samples by means other than mail or common carrier, whose representative, in the course of his or her employment, violates the PDMA prohibition against the sale, purchase, or trade or offer to sell, purchase, or trade drug samples, or any State law prohibiting the sale, purchase, or trade or offer to sell, purchase, or trade drug samples, is, upon conviction of the representative, subject to civil penalties as follows: (1) A civil penalty of not more than $50,000 for each of the first two such violations resulting in a conviction of any representative of the manufacturer or distributor in any 10-year period; and (2) a civil penalty of not more than $1,000,000 for each violation resulting in a conviction of any representative after the second conviction in any 10-year period.

A manufacturer or distributor who fails to report to FDA any conviction of one of its representatives for violations of section 503(c)(1) of the act or any State law that prohibits the sale, purchase, or trade of a drug sample (or the offer to sell, purchase, or trade a drug sample) is subject to a civil penalty of not more than $100,000.

In the **Federal Register** of May 26, 1993 (58 FR 30680), FDA published a proposed rule on procedures for administrative hearings on civil money penalties, including penalties under PDMA. FDA published a correction to this proposal in the **Federal Register** of July 27, 1993 (58 FR 40103).

3. Rewards

Section 7 of PDMA (section 303(b)(5) of the act) provides that a person who provides information leading to the institution of a criminal proceeding against, and conviction of, a person for the sale, purchase, or trade of a drug sample, or the offer to sell, purchase, or trade a drug sample in violation of section 503(c)(1) of the act, is entitled to one-half of the criminal fine imposed and collected for such violation, but not more than $125,000. The proposed rule provides in § 203.70 that an application for such a reward be made to the Director, Office of Compliance, of the appropriate Center.

H. Technical Amendment to State Licensing Guideline

FDA is proposing a technical amendment to the storage and handling requirements of the State licensing guideline at § 205.50(c) to clarify the agency's intention that the paragraph require that prescription drugs be stored at appropriate temperatures in accordance with the requirements of the 22d edition of the U.S. Pharmacopoeia (U.S.P. XXII), the current edition of that compendium.

III. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the principles set out in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order.

Most of the requirements in this proposed rule have already been implemented by the regulated industry in response to PDMA's enactment,

FDA's guidance, and industry trade associations' recommendations.

The regulatory costs of this proposal, which are due to increased paperwork requirements, were calculated by multiplying an estimate of the time necessary to complete the paperwork for each section by an hourly wage rate of $44.99. The agency estimates that nonprofit health care organizations (hospitals and charitable organizations) will require roughly 76,100 hours to complete the paperwork, at a cost of just over $3.4 million (76,000 hours X $44.99) annually. Pharmaceutical manufacturers and distributors will need about 476,000 hours to comply with the paperwork requirements, at a cost of around $21.4 million (476,000 hours X $44.99) annually. In total, therefore, the industry will utilize 552,000 hours (76,000 + 476,000) and spend approximately $24.8 million (3.4 million + 21.4 million) to complete the paperwork requirements. Further details for these estimates are included with the agency's paperwork reduction package, prepared pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Most of the requirements in this proposed rule have already been implemented by the regulated industry, including small entities, in response to PDMA's enactment, FDA's guidance, and industry trade association recommendations. Consequently, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act, no further analysis is required.

IV. Executive Order 12612: Federalism

Executive Order 12612 requires Federal agencies to examine carefully regulatory actions to determine if they would have a significant impact on federalism. Using the criteria and principles set forth in the Order, the agency has considered the impact of this proposed rule on the States, on their relationship with the Federal government, and on the distribution of power and responsibilities among the various levels of government.

FDA is publishing this proposed rule to set forth agency policies and requirements and provide administrative procedures, information, and guidance for those sections of PDMA that are not related to State licensing of wholesale drug distributors. Because enforcement of these sections of PDMA is a Federal responsibility, there should be little, if any, impact on the States from this rule, if it is finalized.

FDA certifies that it has examined this proposed rule. Because it has little, if any, effect on federalism issues, as stated above, and because any effects are not significant, this proposed rule does not require an assessment under Executive Order 12612.

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. 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 instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Prescription Drug Marketing Act of 1987; Policies, Requirements, and Administrative Procedures.

Description: The information requirements contained in the proposed rule would collect information from establishments engaged in the reimportation and wholesale distribution of drugs subject to section 503(b) of the act; the sale, purchase, or trade (or offer to sell, purchase, or trade) of prescription drugs by hospitals, health care entities, and charitable institutions; and the distribution of prescription drug samples.

Description of Respondents: Businesses, hospitals, health care entities, charitable institutions, and other for-profit and not-for-profit organizations; small businesses or organizations.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
203.11	12	1	30 min	6.00
203.23(b), (c)	44,469	2	15 min	22,234.00
203.24	44,469	3	20 min	44,469.00
203.30(a), (b), (c)	34,000	120	1 min	68,000.00
203.31(a), (b), (c)	34,000	480	1 min	272,000.00
203.31(d)	27,200	1	30 min	13,600.00
203.31(e)	4,700	1	1 min	78.33
203.31(f)	12	1	30 min	6.00
203.34	4,700	1	24 hrs	112,800.00
203.37(a)	48	1	30 min	24.00
203.37(b)	1,200	1	60 min	1,200.00
203.37(c)	2	1	30 min	6.00
203.37(d)	4,700	1	15 min	1,175.00
203.39(a)(2)(i)	6,800	1	15 min	1,700.00
203.39(b)(1), (2), (6), (7), (8), (9), (10), (12)	300	1	3 hrs	900.00
203.39(b)(11), (14)	6,800	1	60 min	6,800.00
203.50(a)	125	1	30 min	62.50
203.50(c)	4,700	1	90 min	7,050.00
Total burden hours				552,111.33

The agency has submitted a copy of this proposed rule to OMB for its review of these information collections. Interested persons are requested to send comments regarding this burden estimate or any other aspect of

thiscollection of information, including suggestions for reducing the burden, to FDA's Dockets Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn.: Desk Officer for FDA.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(7) and (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.

VII. Request for Comments

Interested persons may, on or before May 30, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 203

Drugs, Labeling, Manufacturing, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 205

Intergovernmental relations, Prescription drugs, Reporting and recordkeeping requirements, Security measures, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Title 21 of the Code of Federal Regulations be amended as follows:

1. Part 203 is added to read as follows:

PART 203—PRESCRIPTION DRUG MARKETING

Subpart A—General Provisions

Sec.
203.1 Scope.
203.2 Purpose.
203.3 Definitions.

Subpart B—Reimportation

203.10 Restrictions on reimportation.
203.11 Applications for reimportation to provide emergency medical care.
203.12 An appeal from an adverse decision by the district office.

Subpart C—Sales Restrictions

203.20 Sales restrictions.
203.22 Exclusions.
203.23 Revocation of acceptance and reshipment.
203.24 Returns.

Subpart D—Samples

203.30 Sample distribution by mail or common carrier.
203.31 Sample distribution by means other than mail or commoncarrier (direct delivery by a representative or detailer).
203.32 Drug sample storage and handling requirements.
203.33 Drug sample forms.
203.34 Policies and procedures; administrative systems.
203.35 Standing requests.
203.36 Fulfillment houses, shipping and mailing services,comarketing agreements, and third party recordkeeping.
203.37 Investigation and notification requirements.
203.38 Sample lot or control numbers; labeling of sample units.
203.39 Donation of drug samples to charitable institutions.
203.40 Retail pharmacists and drug samples.

Subpart E—Wholesale Distribution

203.50 Requirements for wholesale distribution of prescriptiondrugs.

Subpart F—Request and Receipt Forms, Reports, and Records

203.60 Request and receipt forms, reports, and records.
203.61 Signatures.

Subpart G—Rewards

203.70 Application for a reward.

Authority: Secs. 301, 303, 501, 502, 503, 510, 701, 704, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 333, 351, 352, 353, 360, 371, 374, 381).

Subpart A—General Provisions

§ 203.1 Scope.

This part sets forth procedures and requirements pertaining to the reimportation and wholesale distribution of prescription drugs, including both bulk drug substances and finished dosage forms, and to the sale, purchase, or trade (or the offer to sell, purchase, or trade) of prescription drugs, including bulk drug substances, by hospitals, health care entities, and charitable institutions, and to the distribution of prescription drug samples. Blood and blood components intended for transfusion are excluded from the restrictions in and the requirements of the Prescription Drug Marketing Act of 1987 and the Prescription Drug Amendments of 1992.

§ 203.2 Purpose.

The purpose of this part is to implement the Prescription Drug Marketing Act of 1987 and the Prescription Drug Amendments of 1992, except for those sections relating to State licensing of wholesale distributors (see part 205 of this chapter), to protect the public health, and to protect the public against drug diversion by establishing procedures, requirements, and minimum standards for the distribution of prescription drugs and prescription drug samples.

§ 203.3 Definitions.

(a) *The act* means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.).

(b) Authorized distributor of record means a distributor with whom a manufacturer has established an ongoing relationship to distribute such manufacturer's products.

(c) *Blood* means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(d) *Blood component* means that part of a single-donor unit of blood separated by physical or mechanical means.

(e) *Bulk drug substance* means any drug or drug component furnished in other than finished dosage form that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans.

(f) *Charitable institution or charitable organization* means a nonprofit hospital, health care entity, organization, institution, foundation, association, or corporation that has been granted an exemption under section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

(g) *Common control* means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise.

(h) *Distribute* means to sell, offer to sell, deliver, or offer to deliver a drug to a recipient, except that the term "distribute" does not include the providing of a drug sample to a patient by:

(1) A practitioner licensed to prescribe such drug;

(2) A health care professional acting at the direction and under the supervision of such a practitioner; or

(3) The pharmacy of a hospital or of another health care entity that is acting at the direction of such a practitioner

and that received such sample in accordance with the act and regulations.

(i) *Drug sample* means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(j) *Drug coupon* means a form that may be redeemed, at no cost or at reduced cost, for a drug that is prescribed in accordance with section 503(b) of the act.

(k) *Emergency medical reasons* include, but are not limited to, transfers of a prescription drug between health care entities or from a health care entity to a retail pharmacy to alleviate a temporary shortage of a prescription drug arising from delays in or interruption of regular distribution schedules; sales to nearby emergency medical services, i.e., ambulance companies and fire fighting organizations in the same State or same marketing or service area, or nearby licensed practitioners, of drugs for use in the treatment of acutely ill or injured persons; provision of minimal emergency supplies of drugs to nearby nursing homes for use in emergencies or during hours of the day when necessary drugs cannot be obtained; and transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage; but do not include regular and systematic sales to licensed practitioners of prescription drugs that will be used for routine office procedures.

(l) *FDA* means the U.S. Food and Drug Administration.

(m) *Group purchasing organization* means any entity established, maintained, and operated for the purchase of prescription drugs for distribution exclusively to its members with such membership consisting solely of hospitals and health care entities bound by written contract with the entity.

(n) *Health care entity* means any person that provides diagnostic, medical, surgical, or dental treatment, or chronic or rehabilitative care, but does not include any retail pharmacy or any wholesale distributor. A person cannot simultaneously be a "health care entity" and a retail pharmacy or wholesale distributor.

(o) *Licensed practitioner* means any person licensed by State law to prescribe drugs.

(p) *Manufacturer* means any person who is a manufacturer as defined by § 201.1 of this chapter.

(q) *Nonprofit affiliate* means any not-for-profit organization that is either associated with or a subsidiary of a charitable organization as defined in section 501(c)(3) of the Internal Revenue Code of 1954.

(r) *Ongoing relationship* means an association that exists when a manufacturer and a distributor enter into a written agreement under which the distributor is authorized to sell the manufacturer's products for a period of time or for a number of shipments, at least one sale is made under that agreement, and the name of the authorized distributor of record is entered on the manufacturer's list of authorized distributors of record.

(s) *PDA* means the Prescription Drug Amendments of 1992.

(t) *PDMA* means the Prescription Drug Marketing Act of 1987.

(u) *Person* includes any individual, partnership, corporation, or association.

(v) *Prescription drug* means any drug (including any biological product, except for blood and blood components intended for transfusion or biological products which are also medical devices) required by Federal law (including Federal regulation) to be dispensed only by a prescription, including finished dosage forms, bulk drug substances, and active ingredients subject to section 503(b) of the act.

(w) *Representative* means an employee or agent of a drug manufacturer or distributor who promotes the sale of prescription drugs to licensed practitioners and who may solicit or receive written requests for the delivery of drug samples. A detailer is a representative.

(x) *Sample unit* means a packet, card, blister pack, bottle, container, or other single package comprised of one or more dosage units of a prescription drug sample, intended by the manufacturer or distributor to be distributed by a licensed practitioner to a patient in an unbroken or unopened condition.

(y) *Wholesale distribution* means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(1) Intracompany sales;

(2) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(3) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control;

(5) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons;

(6) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a prescription executed in accordance with section 503(b) of the act;

(7) The distribution of drug samples by manufacturers' and authorized distributors' representatives;

(8) The sale, purchase, or trade of blood or blood components intended for transfusion;

(9) The reshipment of drugs, when conducted in accordance with § 203.23;

(10) Drug returns, when conducted in accordance with § 203.24; or

(11) The sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use.

(z) *Wholesale distributor* means any person engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions.

Subpart B—Reimportation

§ 203.10 Restrictions on reimportation.

No prescription drug that was manufactured in a State and exported from the United States may be reimported by anyone other than its manufacturer, except that FDA may grant permission to a person other than the manufacturer to reimport a prescription drug if it deems such reimportation is required for emergency medical care.

§ 203.11 Applications for reimportation to provide emergencymedical care.

(a) Applications for reimportation for emergency medical care are required to be submitted to the director of the FDA District Office in the district where reimportation is sought (addresses found in § 5.115 of this chapter).

(b) Applications for reimportation to provide emergency medical care will be reviewed and approved or disapproved by each district office.

§ 203.12 An appeal from an adverse decision by the district office.

An appeal from an adverse decision by the district office involving

prescription human drugs other than biological products may be made to the Office of Compliance (HFD-300), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. An appeal from an adverse decision by the district office involving prescription human biological products may be made to the Office of Compliance (HFM-600), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852.

Subpart C—Sales Restrictions

§ 203.20 Sales restrictions.

Except as provided in §§ 203.22, 203.23, and 203.24, no person may sell, purchase, or trade, or offer to sell, purchase, or trade, any prescription drug that was:

(a) Purchased by a public or private hospital or other health care entity; or

(b) Donated or supplied at a reduced price to a charitable organization.

§ 203.22 Exclusions.

Section 203.20 does not apply to:

(a) The purchase or other acquisition of a drug for its own use by a hospital or other health care entity that is a member of a group purchasing organization from the group purchasing organization or from other hospitals or health care entities that are members of the organization.

(b) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by law.

(c) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control.

(d) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons.

(e) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a valid prescription.

(f) The sale, purchase, or trade of a drug or the offer to sell, purchase, or trade a drug by hospitals or health care entities owned or operated by Federal, State, or local governmental units to other hospitals or health care entities owned or operated by Federal, State, or local governmental units.

(g) The sale, purchase, or trade of, or the offer to sell, purchase, or trade, blood or blood components intended for transfusion.

§ 203.23 Revocation of acceptance and reshipment.

The revocation of a sale and purchase transaction by a hospital, health care entity, or charitable institution because of a mistake in ordering or delivery and the reshipment of the prescription drug to a manufacturer or wholesale distributor for a credit or refund are exempt from the prohibitions in § 203.20, provided that:

(a) The hospital, health care entity, or charitable institution ships the drug back to the manufacturer or distributor from which the drug was received within 10 working days of receipt;

(b) The reshipment is made under proper conditions for storage, handling, and shipping; and written documentation showing that proper conditions were maintained is provided to the manufacturer or distributor to whom the drug is reshipped;

(c) If reshipped to the wholesale distributor, the hospital, health care entity, or charitable institution provides written notice to the manufacturer of the revocation and reshipment that includes the following information:

(1) The name and address of the hospital, health care entity, or charitable institution;

(2) The name and address of the manufacturer and wholesale distributor;

(3) The product name and lot number;

(4) The quantity involved in the revocation and reshipment; and

(5) The date of the revocation and reshipment.

§ 203.24 Returns.

The return of a prescription drug purchased by a hospital or health care entity, or acquired at a reduced price by or donated to a charitable institution, to the manufacturer or the wholesale distributor that sold, donated, or supplied the prescription drug, is exempt from the prohibitions in § 203.20, provided that:

(a) The hospital, health care entity, charitable institution, or wholesale distributor notifies the manufacturer that the prescription drug product has been returned to the wholesale distributor;

(b) The hospital, health care entity, or charitable institution documents the return by filling out a credit memo specifying:

(1) The name and address of the hospital, health care entity, or charitable institution;

(2) The name and address of the manufacturer or wholesale distributor from which it was acquired;

(3) The product name and lot or control number;

(4) The quantity returned; and

(5) The date of the return.

(c) The hospital, health care entity, or charitable institution forwards a copy of each credit memo to the manufacturer and retains a copy of each credit memo for its records;

(d) The value of any credit, refund, or exchange for the returned product does not exceed the purchase price or, if a donation, the fair market price of the returned product; and

(e) Any drugs returned to a manufacturer or wholesale distributor are kept under proper conditions for storage, handling, and shipping, and written documentation showing that proper conditions were maintained is provided to the manufacturer or wholesale distributor to which the drugs are returned.

Subpart D—Samples

§ 203.30 Sample distribution by mail or common carrier.

(a) *Requirements for drug sample distribution by mail or common carrier.* A manufacturer or authorized distributor of record may distribute a drug sample to a practitioner licensed to prescribe the drug that is to be sampled, or, at the written request of a licensed practitioner, to the pharmacy of a hospital or other health care entity, by mail or common carrier, provided that:

(1) The licensed practitioner executes and submits a written request to the manufacturer or authorized distributor of record, as set forth in paragraph (b) of this section, before the delivery of the drug sample;

(2) The recipient executes a written receipt, as set forth in paragraph (c) of this section, when the drug sample is delivered; and

(3) The recipient returns the receipt to the manufacturer or distributor from which the drug sample was received.

(b) *Contents of the written request form for delivery of samples by mail or common carrier.* (1) A written request for a drug sample to be delivered by mail or common carrier to a licensed practitioner is required to contain the following:

(i) The name, address, professional title, signature of the practitioner making the request;

(ii) The practitioner's State license number or Drug Enforcement Administration identification number;

(iii) The proprietary or established name and strength of the drug sample requested;

(iv) The quantity requested;

(v) The name of the manufacturer, and the authorized distributor of record, if the drug sample is requested from an authorized distributor of record; and

(vi) The date of the request.

(2) A written request for a drug sample to be delivered by mail or common carrier to the pharmacy of a hospital or other health care entity is required to contain, in addition to all of the information in paragraph (b)(1) of this section, the name and address of the pharmacy of the hospital or other health care entity to which the drug sample is to be delivered.

(c) *Contents of the receipt to be completed upon delivery of a drug sample.* The receipt is to be on a form designated by the manufacturer or distributor, and is required to contain the following:

(1) If the drug sample is delivered to the licensed practitioner who requested it, the receipt is required to contain the name, address, professional title, and signature of the practitioner or the practitioner's designee who acknowledges delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery.

(2) If the drug sample is delivered to the pharmacy of a hospital or other health care entity at the request of a licensed practitioner, the receipt is required to contain the name and address of the requesting licensed practitioner, the name and address of the hospital or health care entity pharmacy designated to receive the drug sample; the name, address, professional title, and signature of the person acknowledging delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery.

§ 203.31 Sample distribution by means other than mail or commoncarrier (direct delivery by a representative or detailer).

(a) *Requirements for drug sample distribution by means other than mail or common carrier.* A manufacturer or authorized distributor of record may distribute by means other than mail or common carrier, e.g., by a representative or detailer, a drug sample to a practitioner licensed to prescribe the drug to be sampled, or, at the written request of such a licensed practitioner, to the pharmacy of a hospital or other health care entity, provided that:

(1) The manufacturer or authorized distributor of record receives from the licensed practitioner a written request signed by the licensed practitioner before the delivery of the drug sample;

(2) A receipt is signed by the recipient, as set forth in paragraph (c) of this section, when the drug sample is delivered;

(3) The receipt is returned to the manufacturer or distributor; and

(4) The requirements of paragraphs (d) through (f) of this section are met.

(b) *Contents of the written request forms for delivery of samples by a representative.* (1) A written request for delivery of a drug sample by a representative to a licensed practitioner is required to contain the following:

(i) The name, address, professional title, signature of the practitioner making the request;

(ii) The practitioner's State license number or Drug Enforcement Administration identification number;

(iii) The proprietary or established name and strength of the drug sample requested;

(iv) The quantity requested;

(v) The name of the manufacturer and the authorized distributor of record, if the drug sample is requested from an authorized distributor of record; and

(vi) The date of the request.

(2) A written request for delivery of a drug sample by a representative to the pharmacy of a hospital or other health care entity is required to contain, in addition to all of the information in paragraph (b) of this section, the name and address of the pharmacy of the hospital or other health care entity to which the drug sample is to be delivered.

(c) *Contents of the receipt to be completed upon delivery of a drug sample.* The receipt is to be on a form designated by the manufacturer or distributor, and is required to contain the following:

(1) If the drug sample is received by the licensed practitioner who requested it, the receipt is required to contain the name, address, professional title, and signature of the practitioner or the practitioner's designee who acknowledges delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery.

(2) If the drug sample is received by the pharmacy of a hospital or other health care entity at the request of a licensed practitioner, the receipt is required to contain the name and address of the requesting licensed practitioner, the name and address of the hospital or health care entity pharmacy designated to receive the drug sample; the name, address, professional title, and signature of the person acknowledging delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery.

(d) *Inventories of drug samples of manufacturers' and distributors' representatives.* Each drug manufacturer or authorized distributor of record that distributes drug samples by means of representatives shall conduct, at least annually, a complete and accurate drug sample inventory, utilizing generally accepted inventory practices. All drug samples in the possession or control of each manufacturer's and distributor's representatives are required to be inventoried, and the results of the inventory are required to be recorded in an inventory record and reconciliation report.

(1) The inventory record is required to identify all drug samples by the proprietary or established name and dosage strength, and number of sample units of each drug sample in stock.

(2) The reconciliation report is required to include:

(i) A report of the physical count of the most recently completed prior inventory;

(ii) A record of each drug sample shipment received since the most recently completed prior inventory, including the sender and date of the shipment, and the proprietary or established name, dosage strength, and number of sample units received;

(iii) A record of drug sample distributions since the most recently completed inventory showing the name and address of each recipient of each sample unit shipped, the date of the shipment, and the proprietary or established name, dosage strength, lot or control number, and number of sample units shipped; and

(iv) An explanation for any significant loss.

(3) The inventory and reconciliation reports shall be conducted and prepared by persons other than the representatives being inventoried or supervisors or managers in their department, division, or branch, or in their direct line of supervision or command.

(4) A manufacturer or authorized distributor of record shall carefully evaluate any apparent discrepancy or significant loss in its inventory and reconciliation, and shall fully investigate any such discrepancy or significant loss that cannot be justified.

(e) *Lists of manufacturers' and distributors' representatives.* Each drug manufacturer or authorized distributor of record who distributes drug samples by means of representatives shall maintain a list of the names and addresses of its representatives who

distribute drug samples and of the sites where drug samples are stored.

(f) *Notification if representative is convicted of violations.* Drug manufacturers or authorized distributors of record shall report to FDA any conviction of their representatives for violations of section 503(c)(1) of the act or a State law because of the sale, purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample.

§ 203.32 Drug sample storage and handling requirements.

(a) *Storage and handling conditions.* Manufacturers, authorized distributors of record, and their representatives shall store and handle all drug samples under conditions that will maintain their stability, integrity, and effectiveness, and ensure that the drug samples are free of contamination, deterioration, and adulteration.

(b) *Compliance with compendial and labeling requirements.* A manufacturer, authorized distributor of record, and their representatives can generally comply with this section by following the compendial and labeling requirements for storage and handling of a particular prescription drug in handling samples of that drug.

§ 203.33 Drug sample forms.

A sample request or receipt form may be delivered by mail, common carrier, or private courier or may be transmitted photographically or electronically (i.e., by telephoto, wirephoto, radiophoto, facsimile transmission (FAX), xerography, or electronic data transfer) or by any other system, provided that the method for transmission meets the security requirements set forth in § 203.60(d).

§ 203.34 Policies and procedures; administrative systems.

Each manufacturer or authorized distributor of record that distributes drug samples shall establish, maintain, and adhere to written policies and procedures describing its administrative systems for the following:

(a) Distributing drug samples by mail or common carrier, including methodology for reconciliation of requests and receipts;

(b) Distributing drug samples by means other than mail or common carrier including the methodology for their independent sample distribution security and audit system;

(c) Conducting its inventory of drug samples under § 203.31(d), including an inventory schedule;

(d) Auditing and detecting falsified or incomplete drug sample records;

(e) Identifying any significant loss of drug samples and notifying FDA of the loss;

(f) Monitoring any loss or theft of drug samples; and

(g) Storing drug samples by representatives.

§ 203.35 Standing requests.

Manufacturers or authorized distributors of record shall not distribute drug samples on the basis of open-ended or standing requests, but shall require separate written requests for each drug sample or group of samples. An arrangement by which a licensed practitioner requests in writing that a specified number of drug samples be delivered over a period of not more than 6 months, with the actual delivery dates for parts of the order to be set by subsequent oral communication or electronic transmission, is not considered to be a standing request.

§ 203.36 Fulfillment houses, shipping and mailing services,comarketing agreements, and third party recordkeeping.

(a) *Responsibility for creating and maintaining forms, reports, and records.* Any manufacturer or authorized distributor of record that uses a fulfillment house, shipping or mailing service, or other third party, or engages in a comarketing agreement with another manufacturer or distributor to distribute drug samples or to meet any of the requirements of PDMA, PDA, or this part, remains responsible for creating and maintaining all requests, receipts, forms, reports, and records required under PDMA, PDA, and this part.

(b) *Responsibility for producing requested forms, reports, or records.* A manufacturer or authorized distributor of record that contracts with a third party to maintain some or all of its records shall produce requested forms, reports, records, or other required documents within 48 hours of a request by an authorized representative of FDA or another Federal, State, or local regulatory or law enforcement official.

§ 203.37 Investigation and notification requirements.

(a) Investigation of falsification of drug sample records. (1) A manufacturer or authorized distributor of record that has reason to believe that any person has falsified drug sample requests, receipts, or records shall conduct a full and complete investigation, and shall notify FDA, by telephone or in writing, within 5 working days of becoming aware of a falsification and within 5 working days of the completion of an investigation.

(2) A manufacturer or authorized distributor of record shall provide FDA with a complete written report, including the reason for and the results of the investigation, not later than 30 days after the date of the initial notification.

(b) *Significant loss or known theft of drug samples.* (1) A manufacturer or authorized distributor of record that distributes drug samples or a charitable institution that receives donated drug samples from a licensed practitioner shall notify FDA, by telephone or in writing, within 5 working days of becoming aware of any significant loss or known theft of drug samples and within 5 working days of the completion of an investigation into a report of a significant loss or known theft.

(2) A manufacturer or authorized distributor of record shall provide FDA with a complete written report not later than 30 days after the date of the initial notification.

(c) *Conviction of a representative.* (1) A manufacturer or authorized distributor of record that distributes drug samples shall notify FDA, by telephone or in writing, within 30 days of becoming aware of the conviction of one or more of its representatives for a violation of section 503(c)(1) of the act or any State law involving the sale, purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample.

(2) A manufacturer or authorized distributor of record shall provide FDA with a complete written report not later than 30 days after the date of the initial notification.

(d) *Selection of individual responsible for drug sample information.* A manufacturer or authorized distributor of record that distributes drug samples shall inform FDA in writing within 30 days of selecting the individual responsible for responding to a request for information about drug samples of that individual's name, business address, and telephone number.

(e) *Whom to notify at FDA.* Notifications and reports concerning prescription human drugs shall be made to the Division of Drug Quality Evaluation (HFD–330), Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Notifications and reports concerning prescription human biological products shall be made to the Division of Inspections and Surveillance (HFM–650), Office of Compliance, Center for Biologics Evaluation and Research, Food and Drug

Administration, 1401 Rockville Pike, Rockville, MD 20852.

§ 203.38 Sample lot or control numbers; labeling of sample units.

(a) *Lot or control number required on drug sample labeling and sample unit label.* The manufacturer or authorized distributor of record of a drug sample shall include in the labeling of the drug sample and the label of the sample unit an identifying lot or control number that will permit the tracking of the distribution of each drug sample unit.

(b) *Lot or control number required on all drug sample distribution records.* All drug sample distribution records required under this part shall contain the lot or control number.

(c) *Labels of sample units.* Each sample unit shall bear a label that clearly denotes its status as a drug sample, e.g., "sample," "not for sale," "professional courtesy package."

(1) A drug that is labeled as a drug sample is deemed to be a drug sample within the meaning of the act.

(2) A drug product dosage unit that bears an imprint identifying the dosage form as a drug sample is deemed to be a drug sample within the meaning of the act.

(3) Notwithstanding the above, any article that is a drug sample as defined in section 503(c)(1) of the act and § 203.3(i) that fails to bear the label required in this paragraph is a drug sample.

§ 203.39 Donation of drug samples to charitable institutions.

(a) A charitable institution may receive a drug sample donated by a licensed practitioner for dispensing to a patient of the charitable institution, provided that the charitable institution meets the conditions set forth in paragraph (b) of this section; and

(1) The charitable institution is licensed by the State, if required by State law, and is otherwise in compliance with State law; and

(2) The charitable institution has enrolled with FDA. A charitable institution is enrolled when it has notified the FDA district office in which it is located (addresses found in § 5.115 of this chapter) that it intends to solicit and receive drug samples, has made application to the district office for a central file number, and has received such a number.

(i) A person, partnership, or corporation that seeks to enroll with FDA as a charitable institution for the solicitation and receipt of donated drug samples is required to provide the following information to the district office:

(A) The name, address, and telephone number of the person, partnership, or corporation seeking to enroll; and

(B) The name, address, and telephone number of the agent, employee, or other individual responsible for solicitations and receipt of donated drug samples.

(ii) Once the required information has been provided, the district office will advise the applicant charitable institution that it has been enrolled and issue the applicant a central file number.

(b) Each recipient charitable institution shall comply with the following procedures for receiving, holding, dispensing, and distributing donated drug samples:

(1) A recipient charitable institution shall provide a written identification document to any employee or agent authorized to act on behalf of the institution in soliciting or receiving donations of prescription drug samples. The employee or agent identification document shall be valid for a limited term, but may be renewable.

(2) Each recipient charitable institution shall maintain a current listing of all agents or employees authorized to solicit and receive drug samples on behalf of the institution. The listing shall include the name and telephone number of the authorized agent or employee in charge of prescription drug sample solicitation, receipt, and redistribution.

(3) A drug sample donated by a licensed practitioner or donating charitable institution may be received by a charitable institution only in its original, unopened packaging with its labeling intact.

(4) Delivery of a donated drug sample to a recipient charitable institution may be completed by mail or common carrier, collected by an authorized agent or employee of the recipient charitable institution, or personal delivery by a licensed practitioner or an authorized agent or employee of the donating charitable institution. The licensed practitioner or donating charitable institution shall place donated drug samples in a sealed carton for delivery to or collection by the recipient institution.

(5) A donated drug sample may not be dispensed to a patient or be distributed to another charitable institution until it has been examined by a licensed practitioner or registered pharmacist at the recipient charitable institution to confirm that the donation record accurately describes the drug sample delivered and that no drug sample is adulterated or misbranded for any reason, including, but not limited to, the following:

(i) The drug sample is out of date;

(ii) The labeling has become mutilated, obscured, or detached from the drug sample packaging;

(iii) The drug sample shows evidence of having been stored or shipped under conditions that might adversely affect its stability, integrity, or effectiveness;

(iv) The drug sample is for a prescription drug product that has been recalled or is no longer marketed; or

(v) The drug sample is otherwise possibly contaminated, deteriorated, or adulterated.

(6) The recipient charitable institution shall dispose of any drug sample found to be unsuitable by destroying it or by returning it to the manufacturer. The charitable institution shall maintain complete records of the disposition of all destroyed or returned drug samples.

(7) If a donated drug sample is collected by an authorized agent or employee of the recipient charitable institution or is personally delivered by a licensed practitioner or an authorized agent of a donating charitable institution, the employee or agent of the recipient institution shall prepare at the time of collection or delivery a complete and accurate donation record containing the information set forth in paragraph (b)(9) of this section, a copy of which shall be retained by the recipient and by the donor.

(8) If the donated drug sample is transferred by mail or common carrier, the donor shall prepare a complete and accurate donation record for any drug sample so transferred.

(i) The donor shall include a copy of the donation record with the drug sample shipment.

(ii) An authorized agent or employee of the recipient charitable institution shall countersign the donation record, return one copy to the donor, and retain one copy for the recipient's records.

(9) The completed donation record is required to include the following information:

(i) The name, address, and telephone number of the licensed practitioner (or donating charitable institution); and the practitioner's professional title and State license number or Drug Enforcement Administration identification number;

(ii) The manufacturer, brand name, quantity, and lot or control number of the drug sample donated;

(iii) The date of the donation;

(iv) The signature of the licensed practitioner making the donation (or the signature of the authorized agent of the donating charitable institution); and

(v) The signature of the authorized agent or employee of the recipient charitable institution.

(10) Each recipient charitable institution shall maintain complete and

accurate records of donation, receipt, inspection, inventory, dispensing, redistribution, destruction, and returns sufficient for complete accountability and auditing of drug sample stocks.

(11) Each recipient charitable institution shall conduct an inventory of prescription drug sample stocks, at least annually, utilizing independent inventory personnel, and shall prepare a report reconciling the results of each inventory with the most immediate prior inventory. Drug sample inventory discrepancies and reconciliation problems shall be investigated by the charitable institution and reported to FDA.

(12) A recipient charitable institution shall provide written certification to the licensed practitioner or donating charitable institution that it is in conformity with all the requirements of this part before receiving any drug sample donation. Such certification may be made part of the donation record.

(13) A recipient charitable institution shall store drug samples under conditions that will maintain the sample's stability, integrity, and effectiveness, and will ensure that the drug samples will be free of contamination, deterioration, and adulteration.

(14) A charitable institution shall notify FDA within 5 working days of becoming aware of a significant loss or known theft of prescription drug samples.

(c) A charitable institution may donate drug samples to another recipient charitable institution for dispensing to patients, provided that the recipient charitable institution meets the requirements set forth in paragraphs (a) and (b) of this section.

§ 203.40 Retail pharmacists and drug samples.

The presence in a retail pharmacy of any drug sample shall be considered evidence that the drug sample was obtained by the retail pharmacy in violation of section 503(c)(1) of the act.

Subpart E—Wholesale Distribution

§ 203.50 Requirements for wholesale distribution of prescription drugs.

(a) *Identifying statement for sales by unauthorized distributors.* Before the completion of any wholesale distribution by a wholesale distributor of a prescription drug for which the seller is not an authorized distributor of record to another wholesale distributor or retail pharmacy, the seller shall provide to the purchaser a statement identifying each prior sale, purchase, or trade of such drug. This identifying statement shall include:

(1) The proprietary and established name of the drug;

(2) Dosage;

(3) Container size;

(4) Number of containers;

(5) The drug's lot or control number(s);

(6) The business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer; and

(7) The date of each previous transaction.

(b) *Identifying statement not required when additional manufacturing processes are completed.* A manufacturer that subjects a drug to any additional manufacturing processes to produce a different drug is not required to provide to a purchaser a statement identifying the previous sales of the component drug or drugs.

(c) *List of authorized distributors of record.* Each manufacturer shall maintain at the corporate offices a current written list of all authorized distributors of record.

(1) Each manufacturer's list of authorized distributors of record shall specify whether each distributor listed thereon is authorized to distribute the manufacturer's full product line, or only particular, specified products.

(2) Each manufacturer shall update its list of authorized distributors of record on a continuing basis.

(3) Each manufacturer shall make its list of authorized distributors of record available on request to the public for inspection or copying. A manufacturer may impose reasonable copying charges for such requests from members of the public.

Subpart F—Request and Receipt Forms, Reports, and Records

§ 203.60 Request and receipt forms, reports, and records.

(a) *Creation of request and receipt forms, reports, records, and other documents.* Request and receipt forms, reports, records, and other documents required by PDMA, PDA, and this part may be created on paper or on electronic media.

(b) *Maintenance of request and receipt forms, reports, records, and other documents created on paper.* Request and receipt forms, reports, records, and other documents created on paper may be maintained on paper or by photographic or electronic imaging, provided that the security and authentication requirements described in paragraph (d) of this section are followed.

(c) *Maintenance of request and receipt forms, reports, records, and other documents created by electronic means.* Request and receipt forms, reports, records, and other documents created by means of electronic data entry and recordkeeping equipment may be stored using computer technologies, provided that the security and authentication requirements described in paragraph (d) of this section are followed.

(d) *Security and authentication requirements for request and receipt forms, reports, records, and other documents.* A request or receipt form, report, record, or other document, and any signature appearing thereon, shall be created, maintained, or transmitted in a form that provides reasonable assurance of being:

(1) Resistant to tampering, revision, modification, fraud, unauthorized use, or alteration;

(2) Preserved in accessible and retrievable fashion; and

(3) Visible or readily made visible to permit copying or other means of duplication for purposes of review, analysis, verification, authentication, and reproduction by the person who executed the form or created the record, by the manufacturer or distributor, and by authorized personnel of FDA and other regulatory and law enforcement agencies.

(e) *Retention of request and receipt forms, reports, lists, records, and other documents.* (1) Any person required to create or maintain reports, lists, or other records under PDMA, PDA, or this part shall retain them for at least 3 years after the date of their creation.

(2) Any person required to create or maintain reports, or records relating to the distribution of drug samples shall retain them for at least 3 years after the date of their creation or 3 year after the date of expiration of a drug sample for which the record is being kept, whichever is later.

(3) Any person required to create or maintain reports, or records relating to the distribution of drug samples shall maintain a record of the distribution of drug samples that identifies the drugs distributed and the recipients of the distributions and all drug samples destroyed or returned to the manufacturer. These records shall be maintained for 3 years from the date on which they were created.

(f) *Availability of request and receipt forms, reports, lists, and records.* Any person required to create or maintain request and receipt forms, reports, lists, or other records under PDMA, PDA, or this part shall make them available upon request, in a form that permits copying or other means of duplication, to FDA or other Federal, State, or local regulatory and law enforcement officials for review and reproduction.

§ 203.61 Signatures.

(a) *Signatures on request and receipt forms, reports, and records.* A verifiable signature on a request and receipt form, report, record, or other document shall be made by means of a writing or marking instrument such as a pen, indelible pencil, or electronic stylus on electronic pad. Imprinting or automatic reproduction of a signature by a device or machine (such as a stamp, copier, or autopen) is prohibited.

(b) *Performance standards and special security requirements for signatures on electronic media.* If an electronic pad and stylus or other electronic medium is used to execute and record signatures, it shall be installed and operated with:

(1) A system permitting visual review of the signature;

(2) An authentication system to detect or inhibit entry of a forged, traced, fraudulent, or counterfeit signature; and

(3) A locking mechanism that blocks alteration of documents or signatures after the signatures are made.

(c) *Signature surrogates.* [Reserved]

Subpart G—Rewards

§ 203.70 Application for a reward.

(a) *Reward for providing information leading to the institution of a criminal proceeding against, and conviction of, a person for the sale, purchase, or trade of a drug sample.* A person who provides information leading to the institution of a criminal proceeding against, and conviction of, a person for the sale, purchase, or trade of a drug sample, or the offer to sell, purchase, or trade a drug sample, in violation of section 503(c)(1) of the act, is entitled to one-half the criminal fine imposed and collected for such violation, but not more than $125,000.

(b) *Procedure for making application for a reward for providing information leading to the institution of a criminal proceeding against, and conviction of, a person for the sale, purchase, or trade of a drug sample.* A person who provides information leading to the institution of a criminal proceeding against, and conviction of, a person for the sale, purchase, or trade of a drug sample, or the offer to sell, purchase, or trade a drug sample, in violation of section 503(c)(1) of the act, may apply for a reward by making written application to: (1) Director, Office of Compliance (HFD–300), Center for Drug Evaluation and Research, 7500 Standish Pl., Rockville, MD 20855; or (2) Director, Office of Compliance (HFM–600), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852, as appropriate.

PART 205—GUIDELINES FOR STATE LICENSING OF WHOLESALE PRESCRIPTION DRUG DISTRIBUTORS

2. The authority citation for 21 CFR part 205 continues to read as follows:

Authority: Secs. 501, 502, 503, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 371, 374).

3. Section 205.3 is amended by adding new paragraphs (f)(9), (f)(10), (f)(11), and (h) to read as follows:

§ 205.3 Definitions.

* * * * *

(f) * * *

(9) The reshipment of drugs, when conducted in accordance with § 203.23 of this chapter;

(10) Drug returns, when conducted in accordance with § 203.24 of this chapter; or

(11) The sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use.

* * * * *

(h) Health care entity means any person that provides diagnostic, medical, surgical, or dental treatment, or chronic or rehabilitative care, but does not include any retail pharmacy or any wholesale distributor. A person cannot simultaneously be a "health care entity" and a retail pharmacy or wholesale distributor.

4. Section 205.50 is amended by revising the introductory text of paragraph (c) and paragraph (c)(1) to read as follow:

§ 205.50 Minimum requirements for the storage and handling of prescription drugs and for the establishment and maintenance of prescription drug distribution records.

* * * * *

(c) *Storage.* All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with the requirements, if any, in the labeling of such drugs, or with the requirements in the U.S. Pharmacopeia XXII (U.S.P. XXII), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852, or available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC.

(1) If no storage requirements are established for a prescription drug, the drug shall be held at "controlled room temperature" as defined in U.S.P. XXII to help ensure that its identity, strength, quality, and purity are not adversely affected.

* * * * *

Dated: March 1, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–5540 Filed 3–11–94; 8:45 am]

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Monday
March 14, 1994

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling; Nutrition Labeling, Small Business Exemption; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N-0031]

RIN 0905-AD08

Food Labeling; Nutrition Labeling, Small Business Exemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations to modify the basis on which low-volume food products of small businesses are exempted from the requirements for nutrition labeling. The proposed regulations will also establish a notification procedure for small businesses to claim exemption for their qualifying food products. This proposal is in response to the Nutrition Labeling and Education Act Amendments of 1993 (the 1993 amendments).

DATES: Written comments by May 13, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective upon its publication in the **Federal Register**.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS-151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4561.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the Nutrition Labeling and Education Act of 1990 (Pub L. 101-535) (the 1990 amendments) was enacted. This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments is that they added section 403(q) to the act (21 U.S.C. 343(q)). This section provides that, with certain exceptions, a food—that is, both a food in conventional form and a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances—is misbranded unless its label or labeling bears certain nutrition information (nutrition labeling).

The 1990 amendments, however, also provide an exemption from mandatory nutrition labeling for small businesses. Section 403(q)(5)(D) of the act provides that:

> [I]f a person offers food for sale and has annual gross sales made or business done in sales to consumers which is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers which is not more than $50,000, the requirements of subparagraphs (1), (2), (3), and (4) [the provisions that establish the nutrition labeling requirement] shall not apply with respect to food sold by such person to consumers unless the label or labeling of food offered by such person provides nutrition information or makes a nutrition claim.

In the **Federal Register** of November 27, 1991 (56 FR 60366 at 60376), in a document entitled "Food Labeling; Reference Daily Intakes and Daily Reference Values; Mandatory Status of Nutrition Labeling and Nutrient Content Revision" (hereinafter referred to as "the mandatory nutrition labeling proposal"), FDA proposed to reflect this provision of the 1990 amendments in § 101.9(j)(1) of its regulations (21 CFR 101.9(j)(1)).

Many comments to the mandatory nutrition labeling proposal stressed that the dollar exemption limits that FDA proposed to implement in the 1990 amendments were too low. The comments argued that the sum of the analytical, printing, and other costs of nutrition labeling are prohibitively expensive for low-volume products. FDA found that these comments were persuasive, and that some adjustment to this exemption was necessary. Additionally, FDA participated in a series of public forums that had been scheduled by the United States Department of Agriculture to discuss the small business issue. These forums were held in May 1992 in Kansas City, MO; Atlanta, GA; and San Francisco, CA. In the **Federal Register** of May 6, 1992 (57 FR 19410), FDA announced its participation in the public forums and requested comment on a number of issues concerning exemption of food products of small businesses.

The agency compiled the information that it received in response to the notice and at the public forums. This information helped form the basis for the agency's "Final Regulatory Flexibility Analysis of the Regulations Implementing the Nutrition Labeling and Education Act of 1990" (Ref. 1). FDA announced the public availability of this analysis in the **Federal Register** of July 6, 1993 (58 FR 36205).

In adopting the exemption for food labeled by small businesses in its final rule on nutrition labeling of January 6, 1993, entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label" (58 FR 2079 at 2144) (hereinafter referred to as "the mandatory nutrition labeling final rule"), FDA stated that it was constrained by the requirements of section 403(q)(5)(D) of the act. Therefore, the agency adopted the exemption for small business, as it had proposed the exemption, as part of the mandatory nutrition labeling final rule in § 101.9(j)(1)(i). This exemption (as corrected on August 18, 1993 (58 FR 44063 at 44083)) states:

> Food [is exempt from § 101.9 *Nutrition labeling of food* when] offered for sale by a manufacturer, packer, or distributor who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

The agency stated, however, that it would make changes in § 101.9 with respect to products labeled by small businesses if Congress were to amend the statute.

The agency established the same exemption in § 101.36(f)(1) (21 CFR 101.36(f)(1)) for dietary supplements of vitamins and minerals in a final rule entitled "Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances" that it published in the **Federal Register** of January 4, 1994 (59 FR 354) (hereinafter referred to as "the dietary supplement final rule"). Under that final rule, § 101.9(j)(1) applies to dietary supplements of herbs and of other similar nutritional substances manufactured, packed, or distributed by small firms.

At about the same time that FDA published the mandatory nutrition labeling final rule, a number of small businesses and the trade associations that represent them made a concerted effort to bring their concerns about the exemption from nutrition labeling for food products of small businesses and about their problems in meeting the requirements of the new law to the attention of Congress. In response to these concerns, a bill was introduced and passed to provide relief to small businesses. In presenting this bill for consideration in Congress, Congressman Dingell noted that:

Over the last two years, it has become evident that, unfortunately, the NLEA exemption for small businesses was too limited. It became clear that many small food businesses simply could not comply with the law's requirements in the timeframe allowed. Some very small businesses may have great difficulty complying at all. Concerns about this matter have been raised to FDA's attention and ours. They are legitimate concerns and they should be addressed. The bill we are introducing today addresses companies with small numbers of employees and products sold in relatively small quantities.

* * * * *

These amendments will provide greatly needed help to small businesses for whom a more realistic deadline for NLEA compliance is essential. Small specialty food manufacturers and retail confectioners, many of whom rely on low-volume sales of seasonal products, will be able to spread the cost of product analysis and printing over a 2- or 3-year period. This literally will allow them to stay in business. According to the Retail Confectioners Association, for example, a 1-year delay in NLEA implementation saves hundreds of millions of dollars.

(139 Congressional Record E 2016 (August 5, 1993).) On August 13, 1993, the President signed the 1993 amendments into law (Pub. L. 103–80).

The 1993 amendments establish a new exemption for low-volume food products that will be available to manufacturers, packers, and distributors based on the number of people that they employ. In creating this new exemption, Congress was responding to the information presented to it that: (1) It can cost several thousand dollars to change the label of a food product to bring it into compliance with the requirements for nutrition labeling; (2) many small businesses simply cannot comply with the requirements within the time frames allowed; and (3) the cost of complying with the nutrition labeling requirements will be prohibitive for small businesses with a low volume of products at low profits (Refs. 2 through 4). By providing additional time before low-volume food products of small businesses must conform with the requirements for nutrition labeling, the 1993 amendments will permit small firms to use up stocks of labels, thereby reducing the costs of label inventory disposal, and to avoid having to compete for design and printing resources with larger firms. By providing that food produced by firms having fewer than 100 employees and selling fewer than 100,000 units of a food product will not have to be nutrition labeled (at least until 2002), the 1993 amendments save such firms the expense of nutrient analysis and preparation of new labels for those products.

Under the new provisions, persons that claim an exemption for a low-volume food product must file with FDA an annual notice claiming the exemption, with the first such notice due by May 7, 1994 (section 403 (q)(5)(E)(iii) of the act), that is, before the first 12-month period during which the nutrition labeling regulations will be in effect. Although the filing of the notice is necessary for an exemption, the agency notes that, under section 403 (q)(5)(E)(i)(I) and (q)(5)(E)(ii) of the act, a product would not be exempt if its labeling provides nutrition information or bears a nutrient content or health claim.

The requirement that the labeling of a product not include nutrition information creates an anomalous result. FDA is aware that a number of small businesses market low-volume food products whose labeling bears nutrition information in accord with the pre-1990 amendment nutrition labeling requirements of the agency's regulations. Because such products bear nutrition information, they would not be eligible for the exemption in section 403(q)(5)(E). Such a result makes little sense under the 1993 amendments, however; small firms with low-volume products, to which Congress was attempting to provide some relief, would be penalized for having provided nutrition information, exactly what Congress was trying to encourage, in the past. Such firms would be presented with the choice of either removing the nutrition information from the labeling of eligible products, which would impose costs that Congress was trying to protect these firms from having to expend, or marketing misbranded products.

FDA is considering providing relief in such cases under § 101.9(g)(9). Under this section of its regulations, FDA may permit alternative means of compliance or additional exemptions to deal with a situation when it is not technologically feasible, or some other circumstance that makes it impracticable, for firms to comply with the requirements for nutritional labeling in § 101.9(c). FDA is currently limiting the permission that it grants for alternative means of compliance or additional exemptions in response to requests under § 101.9(g)(9) to those cases that involve technological problems. However, based upon the comments that it receives in response to this proposal, FDA will consider whether the cost to a small business of changing the labeling of a low-volume food product in response to the 1993 amendments represents a circumstance that makes it impracticable for the firm to comply with the requirements of § 101.9(c) and for which FDA may permit alternative means of compliance or provide an exemption. FDA will consider modifying § 101.9(g)(9) in such a manner as it finds appropriate based on consideration of comments, to accommodate this situation.

To ensure that the regulations implementing the 1993 amendments are in place as close as possible to May 8, 1994, the date of applicability for the nutrition labeling regulations, FDA is proposing that any final rule that may issue in response to this proposal become effective upon its publication in the **Federal Register**. The agency believes that it is in the public interest to have a final rule in place as quickly as possible so that people will know exactly what they must do to claim the exemption and to minimize the possibility that eligible firms will fail to file their claims for exemption in a timely manner. Therefore, FDA tentatively concludes that there is good cause to dispense with the normal 30-day period between publication of a final rule and its effective date. Given the small amount of time before May 8, 1994, however, FDA recommends that persons that want to file notices with FDA to claim the small business exemption follow the procedures proposed below.

II. The Proposal

A. Application of Existing Small Business Exemption From Nutrition Labeling Requirements

In establishing the regulations that provide exemptions for foods labeled by small businesses, i.e., § 101.9(j)(1) for foods in conventional food form and dietary supplements of herbs and of other similar nutritional substances and § 101.36(f)(1) for dietary supplements of vitamins or minerals, FDA interpreted the 1990 amendments as applying to food offered for sale by manufacturers, packers, and distributors. However, the Statement of Explanation for H.R. 2900 (the bill that became the 1993 amendments) states that this interpretation was an inappropriate extension of the law: "[T]he statutory language provides that this exemption applies only to retailers ('person[s who] offer[] food * * * to consumers')." (139 Congressional Record H6358 (August 6, 1993).)

Recognizing that manufacturers, packers, and distributors may have reasonably relied on the small business exemption provided in § 101.9(j)(1), Congress, in section 2(a)(1) of the 1993 amendments, provided that the

exemption in section 403(q)(5)(D) of the act will continue to be available until May 7, 1995, in accordance with the regulation, that is, based on gross sales made or business done to the consumer by manufacturers, packers, and distributors that do not sell directly to the consumer. Section 2(a)(2) of the 1993 amendments further provides that after May 8, 1995, this exemption will only be available with respect to food offered for sale by a person who makes direct sales to consumers.

FDA is proposing to modify §§ 101.9(j)(1) and 101.36(f), consistent with the provisions of section 2(a) of the 1993 amendments, to establish May 7, 1995, as the date after which the exemption provided in section 403(q)(5)(D) of the act will not be available to food labeled by manufacturers, packers, and distributors but will only be available to food offered for sale by a person who makes direct sales to consumers. The agency is revising the numbering of §§ 101.9(j)(1) and 101.36(f) to accommodate the proposed modifications.

B. New Small Business Exemption From Nutrition Labeling

The 1993 amendments added new section 403(q)(5)(E) to the act. This section provides an exemption for low-volume food products of small businesses from the mandatory nutrition labeling requirements of section 403(q)(1) and (q)(2) of the act. FDA is proposing to amend § 101.9(j) by adding a new paragraph (j)(18) to reflect this exemption. Under proposed § 101.9(j)(18), qualification for the exemption for a low-volume food product is based on four factors: (1) The number of units of that food product sold in the United States; (2) the average number of full-time equivalent employees of the person claiming the exemption, e.g., the firm or corporation; (3) the absence of other nutrition information or nutrition claims in the labeling for that food product; and (4) the timely filing with FDA of a notice claiming the exemption. FDA is also proposing similar revisions to § 101.36(f) to provide this exemption from the requirements of section 403(q)(1) and (q)(2) of the act for low-volume food products that are dietary supplements of vitamins or minerals.

1. Definitions

For the purposes of this regulation, FDA is proposing in § 101.9(j)(18)(vi)(A), (j)(18)(vi)(B), and (j)(18)(vi)(C) (and also § 101.36 (f)(2)(vi)(A), (f)(2)(vi)(B), and (f)(2)(vi)(C)) to adopt, with minor changes, the definitions for "unit," "food product," and "person" respectively, as established by the 1993 amendments in section 403(q)(5)(E)(vi) of the act. Also, the agency is proposing a definition for the term "average number of full-time equivalent employees" in §§ 101.9(j)(18)(vi)(D) and 101.36(f)(2)(vi)(D).

a. *Unit.* The agency is proposing to define in §§ 101.9(j)(18)(vi)(A) and 101.36(f)(2)(iv)(A) the term "unit" to mean "the packaging or, if there is no packaging, the form in which a food product is offered for sale to the consumer." This definition reflects section 403(q)(5)(E)(vi)(I) of the act. Consistent with this definition, any completely labeled package such as a can, bottle, box, or bag of a food product that is presented for sale to the consumer is a unit of that product. Thus, for example, for soft drinks, a 12-pack or a 24-pack of 12-ounce (oz) cans that are fully labeled would represent 12 or 24 units, respectively, of that soft drink because each can is in a form in which it can be offered for sale to the consumer. On the other hand, in the case of a package containing six 4-oz containers of pudding, the individual containers of which are not completely labeled (i.e., it complies with the provisions of § 101.9(j)(15)), the package of six would constitute one unit. The difference between these two examples is that in the second case, the packaging of the product, as it is presented to the consumer, is as an individual unit of six containers (a multiunit retail food package), whereas in the first instance, the 12-pack or 24-pack is a convenience used by the manufacturer to deliver 12 or 24 individual units of the product to the consumer.

The agency recognizes that there also may be occasions where a food product is sold in bulk or in individual pieces rather than in packaging; e.g., flour may be sold from bulk containers in a grocery store. Such products are not exempt from nutrition labeling but must have the nutrition information provided on the bulk container from which the food is dispensed (§§ 101.9(j)(16) and 101.36(g)). Under the proposed definition for "unit," a person will have to determine the number of units of product sold in the United States not in packaging on the basis of the typical sales practice for the food product. For example, if 2,000 pounds of flour are sold from bulk displays at grocery stores, and the typical practice for sales to consumers is to price the flour on a per pound basis, then the bulk sales would represent 2,000 units.

To be eligible for an exemption from the provisions of §§ 101.9 or 101.36, as discussed in more detail below, the total number of units of a product sold in all of its forms (i.e., various sizes) must be less than the applicable number of units for the exemption. For example, a firm may manufacture a beverage in 10-oz bottles, 12-oz cans, 16-oz bottles, 1-liter (L) bottles, and 2-L bottles. In determining whether the beverage would be eligible for an exemption, the firm would total the number of units of each of the various sizes of containers sold in the United States, and if the total number of units for all five types of packages is less than the applicable amount, e.g., less than 600,000 in the case of proposed § 101.9(j)(18)(i)(A), then the beverage would be eligible for exemption.

b. *Food product.* The agency is proposing to define in §§ 101.9(j)(18)(vi)(B) and 101.36(f)(2)(vi)(B) the terms "food product" and "food product that is a dietary supplement of vitamins or minerals" to mean "food in any sized package which is manufactured by a single manufacturer or which bears the same brand name, which bears the same statement of identity, and which has similar preparation methods." This definition reflects section 403(q)(5)(E)(vi)(II) of the act. Whether two units of a food are units of the same food product or are units of different food products for the purposes of proposed §§ 101.9(j)(18) and 101.36(f)(2) depends on how they compare under the factors listed in this definition. If two units of a food are the same under each of these three factors, then they would represent two units of the same food product. However, if the two units of a food differ in one or more respects under these three factors, then they would represent one unit of two different food products.

Although the terms "single manufacturer" and "same brand name" are self-explanatory, the agency believes that it is useful to provide more detail on the terms "statement of identity" and "similar method of preparation" and to provide some examples of the relationship between units and food products. In discussing the definition for statement of identity, the Statement of Explanation for H.R. 2900 explains that by statement of identity, it intended that FDA use the definition of "statement of identity" in its regulations under § 101.3(b) (21 CFR 101.3(b)) (139 Congressional Record H6358 (August 6, 1993)). Section 101.3(b) provides that:

(b) Such statement of identity shall be in terms of:

(1) The name now or hereafter specified in or required by any applicable Federal law or regulation; or, in the absence thereof,

(2) The common or usual name of the food; or, in the absence thereof,

(3) An appropriately descriptive term, or when the nature of the food is obvious, a fanciful name commonly used by the public for such food.

Thus, under proposed §§ 101.9(j)(18) and 101.36(f)(2), in determining whether a food is the same food product as another food for determining the number of units sold, a firm should refer to § 101.3(b) to determine whether the two foods have the same statement of identity.

The agency interprets the term "similar preparation methods" to extend to all aspects in the manufacture of the food product, from the initial steps of determining the ingredients to be used, i.e., formulation, to interim treatment steps of the ingredients, such as blanching, to all of the various steps used in the processing of the finished food to be sold to the consumer. Because each of these steps may have an effect on the nutrient content of the finished food product, units of foods that differ with respect to particular steps in their manufacture should be considered by a firm to constitute units of different food products for the purpose of its determining the approximate number of units of food products sold in the United States.

The agency provides the following examples to describe the circumstances in which two units of a food would be two units of the same food product, or, alternatively, one unit each of two different food products: A firm would count two units of a food with the same statement of identity and similar methods of preparation as two units of the same product if they both bear the same brand name even though they were manufactured by two different firms. A private label manufacturer would have to count as units of the same food all production with the same statement of identity (presuming similar method of preparation) even if it is packing the food products under the brand names of five different firms. On the other hand, even if two units of food are made by the same firm (or have the same brand name) and have the same statement of identity, they would not count as units of the same food product if there were differences in their method of preparation, such that the nutrition profiles of the two products are different, (one ice cream product was made with nuts and the other was not) or different manufacturing processes were used (e.g., one was canned while the other was frozen).

c. *Person.* The agency is proposing to define in §§ 101.9(j)(18)(vi)(C) and 101.36(f)(2)(vi)(C) the term "person" to mean "all domestic and foreign affiliates of the corporation, in the case of a corporation." This aspect of the definition reflects section 403(q)(5)(E)(vi)(III) of the act. FDA is also proposing to include within the coverage of this term companies that are not corporations by including the following language in these regulations: "* * * and all affiliates of that firm or other entity, when referring to a firm or other entity that is not a corporation." Section 201(e) of the act (21 U.S.C. 321(e)) defines "person" as including an individual, partnership, corporation, and association.

In the 1993 amendments, Congress clarified the definition of "person" to remove any ambiguity as to the entities that a corporation should include in determining the average number of its full-time equivalent employees. Congress said the employees of each of its affiliates should be counted by a corporation. The agency is proposing to include the sentence noted above in its regulation to provide parallel coverage of persons that are not corporations.

d. *Full-time equivalent employee.* The agency is proposing in §§ 101.9(j)(18)(vi)(D) and 101.36(f)(2)(vi)(D) to define the term "full-time equivalent employee" to mean all individuals employed by the person claiming the exemption and to establish a formula for use by a person to calculate the average number of its full-time equivalent employees. The agency is proposing that the average number of full-time equivalent employees of a company be determined by dividing the total number of hours of salary or wages paid to individuals that render services to a company by the number of hours of work in a year, 2,080 hours (i.e., 40 hours × 52 weeks). Under this formula, a person would base the average number of full-time equivalent employees on a typical work-year and on the total hours worked by individuals employed by the firm and, as noted above, by all of its affiliates. The average number of full-time equivalent employees would be calculated based on all employees of a firm, including production workers, office staff, salesmen, and distribution staff, including any contract personnel. Under the proposed formula, a foreign firm, as well as a domestic firm, will have to calculate the average number of its full-time equivalent employees based on the total numbers of individuals employed by that firm and its affiliates, regardless of whether their operations are related to sales of food products in the United States.

2. Small Business Food Labeling Exemption Notice

The 1993 amendments provide that the exemption contained in section 403(q)(5)(E) of the act shall only be available to a person that files a notice with FDA to claim the exemption for one or more of its low-volume food products before the beginning of the 12-month period during which the exemption is to be in effect. The agency is proposing requirements concerning the filing of this notice in §§ 101.9(j)(18)(iv) and 101.36(f)(2)(iv). In addition to the name and address of the firm claiming exemption for certain of its food products, under the proposed regulations, the notice must include the average number of full-time equivalent employees of the firm, and, for each food product for which an exemption is claimed, the approximate number of units sold by the firm over the 12-month period preceding the period for which the exemption is claimed. FDA intends to treat all information received in such notices in accordance with its public information regulations, 21 CFR part 20, particularly § 20.61 *Trade secrets and commercial or financial information which is privileged or confidential.*

Upon the filing of the notice establishing that a product meets the requirements for an exemption, the food product will be exempt from the requirements for nutrition labeling specified in § 101.9 or § 101.36 during the 12-month period for which the exemption is claimed. There is no requirement for agency action, review, or approval before the exemption is effective.

Recognizing that a person is subject to criminal liability for submitting false information to the Federal Government (18 U.S.C. 1001), FDA is proposing to require that a notice of claimed small business exemption contain a signed certification of the accuracy of the submission by a responsible individual for the company submitting the notice (proposed § 101.9(j)(18)(iv)(F) and § 101.36(f)(2)(iv)(F). Additional information to support the validity of the information provided in the notice may be required under section 403(q)(5)(E)(iii)(IV) of the act.

Section 403(q)(5)(E)(iii)(IV) of the act provides that a notice of a claimed small business exemption shall "contain such information" as FDA (by delegation from the Secretary) may require "to verify the information required" about the number of full-time equivalent employees and unit sales of food products if the agency "has questioned the validity of such information." Because the notice cannot include

information that FDA has not yet required—that is, that FDA has not yet identified as necessary to verify the information in the notice—a two-step process is necessary to implement this provision. The agency must first review the notice and decide whether any verifying information is necessary and then be given access to that information. The agency is considering defining in this rulemaking the procedure through which it will obtain the verifying information that the statute clearly states that it may require.

Information in the notice could be verified either by requiring the submission of supporting documentation or by inspecting that documentation at a firm's place of business. In some circumstances, inspection of records will be more practicable than submission, and vice versa. FDA is thus considering requiring that any company that claims the small business exemption provide the agency with access to its records that support the information contained in the exemption notice if the agency finds that such access is necessary to verify the information contained in the notice. In some situations, the agency may instead require the submission of supporting information to the agency. FDA tentatively finds that it has ample legal authority to impose these requirements.

Under section 701(a) of the act (21 U.S.C. 371(a)), FDA has the authority to adopt by regulation requirements that are necessary for the efficient enforcement of the act, including section 403(q)(5)(E)(iii)(IV) of the act. (See *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 617 (1973); *United States* v. *Nova Scotia Food Products Corp.*, 568 F.2d 240, 246 (2d Cir 1977).) Courts have recognized FDA's authority to impose records inspection requirements where they effectuate the goals of the act. (See *Toilet Goods Association* v. *Gardner*, 387 U.S. 158, 163–64 (1967); *National Confectioners Association* v. *Califano*, 569 F.2d 690, 693 & n.9 (D.C. Cir. 1978).) Implementing section 403(q)(5)(E)(iii)(IV) of the act through the sole method of requiring submission of verifying information to the agency could be unduly burdensome for both the agency and the companies claiming the small business exemption. For example, the agency could determine, under section 403(q)(5)(E)(iii)(IV) of the act, that information in a particular notice must be verified by examining a firm's payroll records and invoices. Copying all of these documents and submitting them to the agency could present difficulty for a small business claiming the exemption. This difficulty could be avoided if FDA examined the relevant documents at the firm's premises. Moreover, verifying the information contained in notice of claimed exemption by inspecting documents at the firm's place of business, and copying only those needed, would in many cases be a more efficient use of the agency's investigational resources. This approach is consistent with FDA's actions in other areas where it has required that records be made available to agency employees. (See, e.g., 21 CFR 108.25(g) (acidified foods); 108.35(h) (thermal processing of low-acid foods); 172.320 (amino acids).)

The agency points out that its contemplated approach is fully consistent with Congress' desire, as reflected in the legislative history of the 1993 amendments, that the small business exemption be obtained in a simple and straightforward manner without complicated reporting. (See 139 Congressional Record E 2016 (August 5, 1993) (statement of Rep. Dingell) ("The system is a simple one that does not require complicated reporting or a response from FDA."); see also 139 Cong. Rec. S 10817 (August 6, 1993) (statement of Sen. Kennedy) (The 1993 amendments "provide[] a straightforward system under which a company simply notifies the FDA that one or more of its products qualify for an exemption"); id. at S 10818 (statement of Sen. Hatch).) Under the approach that the agency is considering, a company would merely have to file a simple notice with the agency. It would then be up to the agency to determine whether any matter needs verification and to take steps to view the documentation required to verify the relevant information.

FDA requests comments on the approach described above. Based on its review of the comments, the agency may provide in the final rule that companies claiming the exemption will be required to permit inspection of supporting documentation or to submit any required information to the agency, as appropriate. Given the late date of this proposal, however, the agency would not make these requirements effective for notices of exemption for 1994–95. Many small firms, in contemplation of the fact that most small businesses must file a notice, have already filed notices without any indication from the agency as to how it intends to enforce the implementation requirements. Because FDA believes that people should have full notice of the requirements that will apply to them when they file a notice of exemption, and because requiring small firms to refile based on any final rule would significantly undercut the efficient enforcement purposes of a records access requirement, FDA would make these requirements applicable to notices seeking exemption beginning with the period from May 8, 1995, to May 7, 1996. Nevertheless, companies filing for an exemption would still be subject to the statutory requirement in section 403(q)(5)(E)(iii)(IV) of the act, and, although the procedural requirements for complying with this section would not be effective until 1995, companies should still be prepared to provide information to FDA to support their notices of exemption should FDA question the validity of any information contained in those notices.

Reflecting new section 403(q)(5)(E)(iii) of the act, the agency is providing in proposed §§ 101.9(j)(18)(iv) and 101.36(f)(2)(iv) that a firm that is not an importer and that has an average of fewer than 10 full-time equivalent employees does not have to file notice for any product for which it has sales of less than 10,000 units in any year for it to be eligible for the small business exemption for that product. The agency would suggest, however, that such a company submit a notice to the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, to establish a record that it is claiming a small business exemption for some or all of its products. (The Office of Food Labeling is the office within FDA that has responsibility for food labeling issues.) The agency intends to make available to FDA and State enforcement offices a list of the names and addresses of firms that have claimed the small business exemption and the names of the products for which they have claimed the exemption. The agency intends to include on this list the names of firms that have fewer than 10 employees and sales of fewer than 10,000 units of a particular product. Such firms are not required to file a notice but can choose to do so voluntarily. FDA believes that the appearance of a product's name on the list will eliminate any questions about its eligibility for an exemption. Thus, even though not required, the submission of a notice of a claimed small business exemption for a food product may be in the best interest of a firm. FDA also intends to include in the list the names of firms eligible for the small business exemption provided in §§ 101.109(j)(1)(i) and 101.36(f)(2)(i) if they file notice with the Office of Food Labeling.

All notices must be filed by May 7, 1994, for the 12-month period beginning

May 8, 1994, the date that the new mandatory nutrition labeling regulations become effective. The notice is to be filed with the Office of Food Labeling (address above).

FDA recognizes that time is growing short for the filing of notices to FDA, and that firms may be anxious to file the notice for claimed exemption. As an interim measure and to assure that all necessary information is submitted, FDA suggests that firms follow the procedures proposed in this document if they file a notice with FDA before the agency issues final regulations.

Because it has received numerous inquiries as to whether a form exists for the submission of the notice, FDA is providing in Appendix I of this document, a model form, along with instructions for completing it in Appendix II of this document. This model form may be used by firms to supply notice of their claimed exemptions. FDA advises, however, that it is not necessary to use this form. The agency also advises that the small business exemption for a food product will be in effect once a notice has been filed with FDA, even though it may be necessary for the Office of Food Labeling to work with the firm that is filing the notice to address deficiencies in the notice. Although no action by the agency is required, FDA will attempt to review all notices to ensure that they are complete and to notify companies of the receipt of the notice, and whether additional information needs to be submitted.

3. Eligibility for the Small Business Exemption

In proposed §§ 101.9 (j)(18)(i) and (j)(18)(ii) and in 101.36 (f)(2)(i) and (f)(2)(ii), FDA is incorporating into its regulations the statutory limits on the number of units sold that would qualify a food product as a low-volume food product eligible for exemption from the nutrition labeling requirements established by section 403(q)(1) and (q)(2) of the act. Proposed §§ 101.9 (j)(18)(i) and (j)(18)(ii) and 101.36 (f)(2)(i) and (f)(2)(ii) also reflect the statutory limits on a firm's average number of full-time equivalent employees that would qualify it as a small business whose products are eligible for an exemption.

The act provides for phased-in coverage of foods that were first introduced into interstate commerce before May 8, 1994. Under section 403(q)(5)(E)(ii)(I) of the act, a food product is eligible for exemption from the nutrition labeling requirements from May 8, 1994, to May 7, 1995, if fewer than 600,000 units of that product were sold in the United States between May 8, 1993, and May 7, 1994, and the person claiming the exemption for that product employed fewer than an average of 300 full-time equivalent employees during that time. The agency recognizes that there are some products that will have come onto the market before May 8, 1994, for which there will not be a full year of sales on which to determine whether they qualify for an exemption as a low-volume food. The agency is proposing that a food for which there is not 12 months of sales before May 8, 1994, will qualify as a low-volume food eligible for an exemption if the sales of the food during the period in which the exemption will apply, May 8, 1994, to May 7, 1995, are reasonably anticipated to be less than 600,000 units. This treatment of products sold before May 8, 1994, but without a full year of sales history before that date, is consistent with that of products not sold in the 12-month period before an exemption is claimed under section 403(q)(5)(E)(i)(IV) of the act.

The agency is proposing to provide for this exemption in § 101.9(j)(18)(i)(A). The agency notes that this proposed provision is not applicable to dietary supplements of herbs and other similar nutritional substances, and that FDA is not proposing to include a parallel provision in § 101.36(f) for dietary supplements of vitamins or minerals, because the mandatory labeling requirements do not become effective for dietary supplements until July 1, 1995.

Under section 403(q)(5)(E)(ii)(II) of the act, the exemption for a food first introduced into interstate commerce before May 8, 1994, narrows in the second year that section 403(q) of the act is applicable. Such a food will continue to be eligible for exemption from nutrition labeling between May 8, 1995, and May 7, 1996, only if there were fewer than 400,000 units of that product sold in the United States between May 8, 1994, and May 7, 1995, and if the firm that claims an exemption for the product employed an average of fewer than 300 full-time equivalent employees during that period. The agency is proposing to reflect this provision in §§ 101.9(j)(18)(i)(B) and 101.36(f)(2)(i)(A) of its regulations.

The exemption narrows even further in the third year. Under section 403(q)(5)(E)(ii)(III) of the act, a food introduced into interstate commerce before May 8, 1994, is eligible for exemption from the requirements for nutrition labeling between May 8, 1996, and May 7, 1997, if there were fewer than 200,000 units of that food product sold in the United States, and if the firm that claims an exemption for such product employed an average of less than 200 full-time equivalent employees, between May 8, 1995, and May 7, 1996. The agency is proposing to reflect this provision in §§ 101.9(j)(18)(i)(C) and 101.36(f)(2)(i)(B) of its regulations.

Under section 403(q)(5)(E)(i) of the act, all other food products are eligible for exemption from the requirements for nutrition labeling in section 403(q)(1) and (q)(2) of the act for any 12-month period if there were fewer than 100,000 units of that food product sold in the United States during the preceding 12 months by the firm claiming the exemption, and if that firm employed an average of less than 100 full-time equivalent employees during that preceding 12-month period. Under section 403(q)(5)(E)(i) of the act, newly marketed food is eligible for exemption if fewer than 100,000 units of that food product are reasonably anticipated to be sold, and if the firm claiming the exemption employs an average of less than 100 full-time equivalent employees, during the 12-month period for which the exemption is claimed. The agency is proposing to reflect these provisions in §§ 101.9(j)(18)(ii) and 101.36(f)(2)(ii) of its regulations.

If adopted, the proposed regulations will operate in the following way: A person with an average of 250 full-time equivalent employees between May 8, 1993, and May 8, 1994, may file a notice with FDA claiming an exemption from the requirements of § 101.9 for the period from May 8, 1994, to May 7, 1995, for each of its products whose sales were less than 600,000 units during the period from May 8, 1993, to May 7, 1994. The filing of the notice will serve to establish the exemption for the food product (assuming no nutrition information or health or nutrient content claims are provided in the labeling of the product). If a product were not offered for sale for the entire year preceding May 8, 1994, the firm could claim a small business exemption for that food product if the number of units of that product sold in the United States during the time period from May 8, 1994, to May 7, 1995, is reasonably anticipated to be fewer than 600,000 units.

If that firm continues to have less than 300 employees, e.g., 275 full-time equivalent employees, for the period of May 8, 1994, to May 7, 1995, it may file by May 7, 1995, a new notice to claim an exemption for the period from May 8, 1995, to May 7, 1996, for any product for which it sold less than 400,000 units in the United States during the period

of May 8, 1994, to May 7, 1995 and where labeling does not bear nutrition information or health or nutrient content claims. However, if the firm continues to have more than 200 full-time equivalent employees for the time period of May 8, 1995, to May 7, 1996, the firm will not be eligible to claim a small business exemption for its products after May 8, 1996. Under section 403(q)(5)(E)(iv) of the act, within 18 months after that date, it will have to bring the labels of its products into compliance with the provisions of §§ 101.9 and 101.36. On the other hand, a firm with less than 200 full-time equivalent employees during the period of May 8, 1995, to May 7, 1996, e.g., 175 employees, would be eligible to file a notice by May 7, 1996, to claim a small business exemption for the time period May 8, 1996, to May 7, 1997, for any product that was on the market before May 8, 1994, and of which it sold fewer than 200,000 units during the period of May 8, 1995, to May 7, 1996. Only those firms having less than 100 full-time equivalent employees would be able to file a notice to claim a small business exemption for a 12-month period after May 8, 1997, and then only for products having approximate annual sales of less than 100,000 units.

Under proposed §§ 101.9(j)(18)(ii) and 101.36(f)(2)(ii), a person that is planning to introduce a new food product into interstate commerce effective August 1, 1994, (i.e., after May 8, 1994) and that has, for example, an average of 50 full-time equivalent employees (during the period of August 1, 1993, to August 1, 1994) may file a notice with FDA by July 31, 1994, claiming an exemption for that product from the requirements of §§ 101.9 or 101.36 for the period from August 1, 1994, until July 31, 1995, if it reasonably anticipates selling fewer than 100,000 units of that product during the period from August 1, 1994, to July 31, 1995. As discussed above, the filing of the notice serves to establish the exemption for the food product. If the firm continues to have less than 100 employees, e.g., only 55 full-time equivalent employees, and continues to sell less than 100,000 units of the product in the United States, the firm will be able to annually claim an exemption.

The agency is proposing in §§ 101.9(j)(18)(iii) and 101.36(f)(2)(iii), consistent with the provisions of section 403(q)(5)(E)(iv) of the act, that a small business exemption for a product shall expire 18 months after the date on which the average number of full-time equivalent employees or number of units of food products sold in the United States exceed the numbers necessary for a food to be eligible for an exemption. For example, under the provisions of proposed §§ 101.9(j)(18)(iii) and 101.36(f)(2)(iii), an exemption for a low-volume food product for the time period between May 8, 1994, and May 7, 1995, expires 18 months after the date on which sales of that food product exceed 600,000 units, or the average number of full-time equivalent employees of the firm claiming the exemption exceeds 300. Alternatively, the exemption shall expire 18 months after the ending date of the 12-month period that the food product was exempt under §§ 101.9(j)(18) or 101.36(f)(2). This provision will provide to a small business approximately the same amount of time after the eligibility for exemption ends that firms that did not qualify for a small business exemption had to bring the labels of their products into compliance with section 403(q) of the act after the publication of final rules implementing that section of the act.

The agency is proposing in §§ 101.9(j)(18)(iv) and 101.36(f)(2)(iv) to require that the certification statement include a commitment on the part of the person claiming an exemption that he or she will notify FDA if the number of units of a food product sold, or the average number of full-time equivalent employees employed, by the person exceeds the applicable numbers. Having made such a commitment, a failure to notify the agency that the food is no longer eligible would subject the person to action under Title 18 of the United States Code.

4. Modification of Exemption Eligibility Requirements

Section 403(q)(5)(E)(v) of the act provides that FDA may by regulation lower the requirements pertaining to the average number of full-time equivalent employees or the number of units of food products requirements for eligibility for exemption for any food product first introduced into interstate commerce after May 8, 2002. Under the act, before FDA can lower these requirements, it must determine that the cost of compliance with the lower requirements will not place an undue burden on persons that would be affected by the lower requirements. FDA is proposing to reflect this provision in §§ 101.9(j)(18)(v) and 101.36(f)(2)(v) of its regulations.

III. Economic Impact

FDA has examined the economic impact of the proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Regulatory Flexibility Act (Pub. L. 96–354) requires agencies to analyze options for regulatory relief for small businesses. The agency finds that the only significant economic effect of this rule is the benefit that it creates by reducing labeling costs for newly exempted companies. This benefit is the result of statutory provisions and not FDA discretion. However, because this benefit is large and affects small businesses, we are providing the following voluntary economic impact analysis and regulatory flexibility analysis that meet the requirements of Executive Order 12866 and the Regulatory Flexibility Act.

There are two types of costs in this regulation: (1) Costs to comply with the notification requirement, and (2) costs of lost nutrition benefits. FDA estimates that the volume of food products produced by manufacturers, packers, or distributors eligible for the exemption being proposed in §§ 101.9(j)(18) and 101.36(f)(2) constitutes less than 1 percent of the U.S. diet. Thus, any lost nutrition benefits are likely to be small. The 1993 amendments require that any small firm (except for very small firms with very low-volume food products) that has low-volume food products that are eligible for exemption from nutrition labeling notify FDA of the volume of sales of such products and the number of its full-time equivalent employees if the product is to be exempt.

Some firms will not have products that are eligible for the new small business exemption, and some will not take advantage of the exemption from nutrition labeling for one of the following reasons: (1) They make nutrient content claims, (2) they make health claims, (3) they decide to label to be competitive with other labeled products, or (4) retailers they sell to insist on nutrition labeling.

Assuming that 50 percent of all firms that could claim the small business exemption will decide not to do so for one of the reasons listed above and will, as a result, provide nutrition labeling for their products, it is estimated that approximately 4,500 firms will remain that have products that are eligible for exemption and not label their products with nutrition labeling in the first 2 years during which nutrition labeling is required by §§ 101.9 and 101.36. The agency further estimates that this figure

will reduce to 4,000 firms for the third year during which nutrition labeling is required and to 3,200 firms for subsequent years. Those firms that choose not to label will be responsible for annually gathering sales and employee data and notifying FDA of their claim for exemption.

First, firms will have to read and analyze the regulation. Second, they will have to determine the average number of full-time equivalent employees they employed in the previous year. Because most firms keep payroll records of expenses only, this will require some conversion. Third, firms will have to determine which of their products qualify for exemption. Again, records of dollar sales are normally kept and, as prices may have changed throughout the year, some analysis may be required for each product that the firm believes to be exempt. This activity may be reasonably expected to take an average of 8 hours per firm although FDA solicits comment on this figure. If costs to perform this activity (plus overhead) average approximately $46 per hour (the value used by FDA in calculating costs for reporting under the Paperwork Reduction Act of 1980), then the first year costs to firms that decide to file a notice of exception are expected to be approximately $1,656,000. This cost will drop to approximately $1,472,000 and $1,177,640 in subsequent years as the number of firms filing a notice decreases as discussed above. The proposed rule reflects the statute's removal of coverage for manufacturers, packers, and distributors under the exemption based on gross value of sales or business done after May 8, 1995. The agency believes that this will result in minimal cost to industry because almost all firms that might have been covered by that exemption will be covered by the new exemption provisions.

Federal costs for implementing the notification system in terms of setting up the system, handling mail, recording firms and products, and providing information concerning exempted firms will approximate $207,000. Thus, it is reasonable to expect that total costs of the notification provision will be less than $2 million for the first year and decrease substantially in subsequent years.

The benefits of this regulation are likely to be very large. First, many small manufacturers noted the impossibility of labeling their low-volume products in comments to the rule.

Assuming that the costs of labeling are about $3,000 per product and that there is an average of 20 products per firm, cost savings from not labeling the products that are exempt are estimated to be between $275 million and $360 million. In addition, this law and regulation prevent both the lost value to consumers of products that would no longer be available and the costs of losing many small businesses.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(8) and (a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The proposed actions pertaining to food labeling meet the criteria in 21 CFR 25.24(a)(11) for exclusion from preparation of an environmental assessment and an environmental impact statement. The proposed regulations pertaining to the small business notification procedure meet the criteria for exclusion described in 21 CFR 25.24(a)(8).

V. Paperwork Reduction Act

This proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Therefore, in accordance with 5 CFR part 1320, the title, description, and respondent description of the information requirements are shown below with an estimate of the annual collection and information burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering necessary information, and completion and submission of the request.

Title: Food Labeling; Nutrition Labeling, Small Business Exemption.

Description: The proposed rule provides the procedures for the submission of a notice of a claim by a company of an exemption from FDA's regulations for mandatory nutrition labeling. FDA action on the notice will be limited to review for completeness and acknowledgement that the notice had been received and was or was not adequate.

The 1993 amendments revise the basis for a small business exemption provided by section 403(q)(5) of the act. This new provision, section 403(q)(5)(E) of the act, provides an exemption for a food product based on the number of employees of the company and the number of units sold on an annual basis. Under the 1993 amendments, to qualify for an exemption, a person must file the notice mentioned in the preceding paragraph with FDA before the time period for the claimed exemption. Proposed §§ 101.9(j)(18)(iv) and 101.36(f)(2)(iv) reflect the information identified in section 403(q)(5)(E) of the act as necessary as part of the notice for a claimed small business exemption.

Description of Respondents: Persons and businesses, particularly small businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden hours per response	Annual burden hours
101.9 and 101.36	4,500	1	8	36,000

The agency expects that the number of respondents and corresponding annual burden hours will decrease over succeeding years as the basis for additional exemptions changes. By May 1997, FDA estimates that approximately 3,200 companies may be filing notices to claim the exemption with a corresponding annual burden hours of approximately 25,600 hours.

The agency has submitted copies of the proposed rule to OMB for its review of these recordkeeping requirements. Interested persons are requested to send comments regarding this estimated burden, including suggestions for reducing this burden to FDA's Dockets Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New

Executive Bldg., Washington, DC 20503, ATTN: Desk Officer for FDA.

VI. Effective Date

Because of the shortness of time until the date on which notices must be filed with the agency to claim the new exemptions, FDA is proposing to make these regulations effective on the date of publication of the final rules in the **Federal Register**. As stated above, FDA tentatively concludes that it has good cause for this action.

VII. Comments

Interested persons may, on or before May 13, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Because of the shortness of the time until firms must begin filing notice of claimed exemptions with the agency, FDA will not be able to extend the comment period beyond that date. Also, the agency is advising that it may not be able to consider any comments received at the Dockets Management Branch after the close of business on May 13, 1994.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Final Regulatory Flexibility Analysis of the Regulations Implementing the Nutrition Labeling and Education Act of 1990.
2. 139 Congressional Record-Extension of Remarks, E2015–2018, August 5, 1993.
3. 139 Congressional Record—House, H6358–6360, August 6, 1993.
4. 139 Congressional Record—Senate, S10817–10818, August 6, 1993.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.9, effective May 8, 1994, is amended by revising paragraph (j)(1) and by adding a new paragraph (j)(18) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(j) * * *

(1) (i) Until May 7, 1995, food offered for sale by a manufacturer, packer, or distributor who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section;

(ii) Food offered for sale by a person who makes direct sales to consumers who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section;

(iii) For purposes of this paragraph, calculation of the amount of sales shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years, reasonable estimates must indicate that annual sales will not exceed the amounts specified. For foreign firms that ship foods into the United States, the business activities to be included shall be the total amount of food sales, as well as other sales to consumers, by the firm in the United States.

* * * * *

(18) Food products that are low-volume (that is, they meet the requirements for units sold in paragraph (j)(18)(i) or (j)(18)(ii) of this section); that, except as provided in paragraph (j)(18)(iv) of this section, are the subject of a claim for an exemption that provides the information required under paragraph (j)(18)(iv) of this section, that is filed before the beginning of the time period for which the exemption is claimed, and that is filed by a person that qualifies to claim the exemption under the requirements for average full-time equivalent employees in paragraph (j)(18)(i) or (j)(18)(ii) of this section; and whose labels, labeling, and advertising do not provide nutrition information or make a nutrient content or health claim.

(i) For food products first introduced into interstate commerce before May 8, 1994, the product shall be exempt for the period:

(A) Between May 8, 1994, and May 7, 1995, if, for the period between May 8, 1993, and May 7, 1994, the person claiming the exemption employed fewer than an average of 300 full-time equivalent employees and fewer than 600,000 units of that product were sold in the United States or, if the product was not offered for sale for a full year before May 8, 1994, it is reasonably anticipated that fewer than 600,000 units of the product will be sold between May 8, 1994, and May 7, 1995;

(B) Between May 8, 1995, and May 7, 1996, if, for the period between May 8, 1994, and May 7, 1995, the person claiming the exemption employed fewer than an average of 300 full-time equivalent employees and fewer than 400,000 units of that product were sold in the United States; and

(C) Between May 8, 1996, and May 7, 1997, if, for the period between May 8, 1995, and May 7, 1996, the person claiming the exemption employed fewer than an average of 200 full-time equivalent employees and fewer than 200,000 units of that product were sold in the United States.

(ii) For all other food products, the product shall be eligible for an exemption for any 12-month period if, for the preceding 12 months, the person claiming the exemption employed fewer than an average of 100 full-time equivalent employees and fewer than 100,000 units of that product were sold in the United States, or in the case of a food product that was not sold in the 12-month period preceding the period for which exemption is claimed, fewer than 100,000 units of such product are reasonably anticipated to be sold in the United States during the period for which exemption is claimed.

(iii) If a person claims an exemption under paragraphs (j)(18)(i) or (j)(18)(ii) of this section for a food product and then, during the period of such exemption, the number of full-time equivalent employees of such person exceeds the appropriate number, or the number of units of the food product sold in the United States exceeds the appropriate number, or, if at the end of the period of such exemption, the food product no longer qualifies for an exemption under the provisions of paragraphs (j)(18)(i) or (j)(18)(ii), such person shall have 18 months from the date that the product no longer qualified

as a low-volume product of a small business to comply with this section.

(iv) A notice shall be filed with the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204 and contain the following information, except that if the person is not an importer and has fewer than 10 full-time equivalent employees, that person does not have to file a notice for any food product with annual sales of fewer than 10,000 total units:

(A) Name and address of firm requesting exemption;

(B) Names of the food products (including the various brand names) for which exemption is claimed;

(C) Name and address of the manufacturer of the food products for which an exemption is claimed, if different than the firm that is claiming the exemption;

(D) The number of full-time equivalent employees. Provide the average number of full-time equivalent individuals employed by the person and its affiliates for the 12 months preceding the period for which a small business exemption is claimed for a product. The number of full-time equivalent employees is to be determined by dividing the total number of hours of salary or wages paid to individuals that render services to the company by the number of hours of work in a year, 2,080 hours (i.e., 40 hours×52 weeks);

(E) Approximate total number of units of the food product sold in the United States in the 12-month period preceding that for which a small business exemption is claimed: Provide the approximate total number of units sold, or expected to be sold, in a 12-month period for each product for which an exemption is claimed. For products that have been in production for 1 year or more before the period for which exemption is claimed, the 12-month period is the period immediately preceding the period for which an exemption is claimed. For other products, the 12-month period is the period for which an exemption is claimed; and

(F) The notice shall be signed by a responsible individual for the person who can certify the accuracy of the information presented in the notice. The individual shall certify that the information contained in the notice is a complete and accurate statement of the number of full-time equivalent employees of the firm and its affiliates and of the number of units of the product for which an exemption is claimed sold by the firm. The individual shall also state that should the average number of full-time equivalent employees or the number of units of the food products sold in the United States by the firm exceed the applicable numbers for the time period for which exemption is claimed; the firm will notify FDA of that fact and of the date on which the number of employees or number of products sold included the standard.

(v) FDA may by regulation lower the employee or units of food products requirements of paragraph (j)(18)(ii) of this section for any food product first introduced into interstate commerce after May 8, 2002, if the agency determines that the cost of compliance with such lower requirement will not place an undue burden on persons subject to it.

(vi) For the purposes of this paragraph, the following definitions apply:

(A) *Unit* means the packaging or, if there is no packaging, the form in which a food product is offered for sale to consumers.

(B) *Food product* means food in any sized package which is manufactured by a single manufacturer or which bears the same brand name, which bears the same statement of identity, and which has similar preparation methods.

(C) *Person* means all domestic and foreign affiliates of the corporation, in the case of a corporation, and all affiliates of a firm or other entity, when referring to a firm or other entity that is not a corporation.

(D) *Full-time equivalent employee* means all individuals employed by the person claiming the exemption. This number shall be determined by dividing the total number of hours of salary or wages paid to individuals that render services to the person by the number of hours of work in a year, 2,080 hours (i.e., 40 hours×52 weeks).

* * * * *

3. Section 101.36, effective July 1, 1995, is amended by revising paragraph (f) to read as follows:

§ 101.36 Nutrition labeling of dietary supplements of vitamins or minerals.

* * * * *

(f)(1) Until May 7, 1995, dietary supplements of vitamins or minerals are exempt from this section when they are offered for sale by a manufacturer, packer, or distributor who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

(i) Dietary supplements of vitamins or minerals are exempt from this section when they are offered for sale by a person who makes direct sales to consumers who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

(ii) For purposes of this paragraph, calculation of the amount of sales shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years, reasonable estimates must indicate that annual sales will not exceed the amounts specified. For foreign firms that ship food into the United States, the business activities to be included shall be the total amount of food sales, as well as other sales to consumers, by the firm in the United States.

(2) Dietary supplements of vitamins or minerals that are low-volume food products (that is, they meet the requirements for units sold in paragraph (f)(2)(i) or (f)(2)(ii) of this section); that, except as provided in paragraph (f)(2)(iv) of this section, are the subject of a claim for an exemption that provides the information required under paragraph (f)(2)(iv) of this section, that is filed before the beginning of the time period for which the exemption is claimed, and that is filed by a person that qualifies to claim the exemption under the requirements for average full-time equivalent employees in paragraph (f)(2)(i) or (f)(2)(ii) of this section; and whose labels, labeling, and advertising do not provide nutrition information or make a nutrient content or health claim.

(i) For food products that are dietary supplements of vitamins or minerals first introduced into interstate commerce before May 8, 1994, the supplement shall be exempt for the period:

(A) Between May 8, 1995, and May 7, 1996, if, for the period between May 8, 1994, and May 7, 1995, the person claiming the exemption employed fewer than an average of 300 full-time equivalent employees and fewer than 400,000 units of that product were sold in the United States; and

(B) Between May 8, 1996, and May 7, 1997, if, for the period between May 8,

1995, and May 7, 1996, the person claiming the exemption employed fewer than an average of 200 full-time equivalent employees and fewer than 200,000 units of that product were sold in the United States.

(ii) For all other food products that are dietary supplements of vitamins or minerals, the supplement shall be eligible for an exemption for any 12-month period if, for the preceding 12 months, the person claiming the exemption employed fewer than an average of 100 full-time equivalent employees and fewer than 100,000 units of that product were sold in the United States, or in the case of a dietary supplement that was not sold in the 12-month period preceding the period for which exemption is claimed, fewer than 100,000 units of such product are reasonably anticipated to be sold in the United States during the period for which exemption is claimed.

(iii) If a person claims an exemption under paragraphs (f)(2)(i) or (f)(2)(ii) of this section for a dietary supplement food product and then, during the period of such exemption, the number of full-time equivalent employees of such person exceeds the appropriate number, or the number of units of the dietary supplement sold in the United States exceeds the appropriate number, or, if at the end of the period of such exemption, the dietary supplement no longer qualifies for an exemption under the provisions of paragraphs (f)(2)(i) or (f)(2)(ii) of this section, such person shall have 18 months from the date that the supplement no longer qualified as a low-volume food product of a small business to comply with this section.

(iv) A notice shall be filed with the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street SW., Washington, DC 20204 and contain the following information, except that if the person is not an importer and has fewer than 10 full-time equivalent employees, that person does not have to file a notice for any dietary supplement of vitamins or minerals with annual sales of fewer than 10,000 total units:

(A) Name and address of firm requesting exemption;

(B) Names of the food products (including the various brand names) for which exemption is claimed;

(C) Name and address of the manufacturer of the food products for which an exemption is claimed, if different than the firm that is claiming the exemption;

(D) The number of full-time equivalent employees. Provide the average number of full-time equivalent individuals employed by the person and its affiliates for the 12 months preceding the period for which a small business exemption is claimed for a product. The number of full-time equivalent employees is to be determined by dividing the total number of hours of salary or wages paid to individuals that render services to the company by the number of hours of work in a year, 2,080 hours (i.e., 40 hours x 52 weeks);

(E) Approximate total number of units of the food product that is a dietary supplement of vitamins or minerals sold in the United States in the 12-month period preceding that for which a small business exemption is claimed. Provide the approximate total number of units sold, or expected to be sold, in a 12-month period for each product for which an exemption is claimed. For products that have been in production for more than 1 year before the period for which exemption is claimed, the 12-month period should be the period preceding the period for which an exemption is claimed. For other products, the 12-month period should be the period for which an exemption is claimed; and

(F) The notice shall be signed by a responsible individual for the person who can certify the accuracy of the information presented in the notice. The individual shall certify that the information contained in the notice is a complete and accurate statement of the number of full-time equivalent employees of the firm and its affiliates and of the number of units of the product for which an exemption is claimed sold by the firm. The individual shall also state that should the average number of full-time equivalent employees or the number of units of the food product sold in the United States by the firm exceed the applicable numbers for the time period for which exemption is claimed, the firm will notify FDA of that fact and of the date on which the number of employees or number of products sold exceeded the standards.

(v) FDA may by regulation lower the employee or units of a food product that is a dietary supplement of vitamins or minerals requirements of paragraph (f)(2)(ii) of this section for any product first introduced into interstate commerce after May 8, 2002, if the agency determines that the cost of compliance with such lower requirement will not place an undue burden on persons subject to it.

(vi) For purposes of this paragraph, the following definitions apply:

(A) *Unit* means the packaging or, if there is no packaging, the form in which a dietary supplement of vitamins and minerals is offered for sale to consumers.

(B) *Food product that is a dietary supplement of vitamins or minerals* means a food (supplement) in any sized package which is manufactured by a single manufacturer or which bears the same brand name, which bears the same statement of identity, and which has similar preparation methods.

(C) *Person* means all domestic and foreign affiliates of the corporation, in the case of a corporation, and all affiliates of a firm or other entity, when referring to a firm or other entity that is not a corporation.

(D) *Full-time equivalent employee means* all individuals employed by the person claiming the exemption. This number shall be determined by dividing the total number of hours of salary or wages paid to individuals that render services to the person by the number of hours of work in a year, 2,080 hours (i.e., 40 hours × 52 weeks).

* * * * *

Dated: March 9, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

Note: The following Appendixes will not appear in the annual Code of Federal Regulations.

Appendix I—Model Small Business Food Labeling Exemption Notice

(Please Type or Clearly Print)

1. Name of Firm _____
2. Firm Address _____
_____ State ____ ZIP _____
3. Name of Food Product for which Exemption is Claimed. (Use continuation sheets as necessary)
_____
_____
_____
_____
_____
4. Name and address of the manufacturers of the products listed in item 3 if different than the firm listed in item 1. (Use continuation sheets as necessary)
_____
_____
_____
_____
_____
5. Average number of Full-Time Equivalent Employees _____ (For time period of May 8, 1993, to May 7, 1994)
6. Approximate Total Number of Units sold in United States between May 8, 1993, and May 7, 1994. (Use continuation sheets as necessary)

No. of Units	Product

7. The undersigned certifies that the above information is a true and accurate representation of the operations of _____. (Name of firm)

The undersigned will notify the Office of Food Labeling of the date on which the average number of full-time equivalent employees or the number of units of food products sold in the United States exceeds the applicable number for the exemption which is being claimed herein.

(Signature)

(Title)

Appendix II—Model Small Business Food Labeling Exemption Notice

Instructions for Completion

(Send to: Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204)

1. Name of Firm: Enter recognized legal name of firm.

2. Firm Address: Enter mailing address for principal place of business.

3. Name of the food product for which exemption is claimed. Enter the name of each food product for which an exemption is claimed. Continuation sheets may be used if necessary.

4. Name and address of manufacturer: Provide the names and addresses of the manufacturers of the food products for which an exemption is being claimed if they are different than the firm that is submitting the claim for exemption.

5. Number of Full-Time Equivalent Employees: Enter the approximate average number of persons employed by the firm for the year preceding the year for which an exemption is claimed. The average number should include all persons employed by the firm and its affiliates. The average number of employees may be calculated by using the following formula: Total number of employee/hours paid divided by 2080 hours a year = Average number of full-time equivalent employees. Employee hours should include overtime paid to employees.

6. Approximate Total Number of Units Sold in United States between May 8, 1993, and May 7, 1994: Enter the total number of units sold in the United States between May 8, 1993, and May 7, 1994 for each product listed under item 3 for which a small business exemption is being claimed. Continuation sheets may be used if necessary. A food product is a food in any sized package which is manufactured by a single manufacturer, or which bears the same brand name; which bears the same statement of identity; and which has similar preparation methods. The approximate total number of units is the summation of all units of the various package sizes of the food product in the form in which the food product is sold to consumers.

7. Certification. The form is to be signed by a responsible individual for the firm that can certify the authenticity of the information presented on the form. The individual signing the form will commit to notify the Office of Food Labeling when the numbers of full-time equivalent employees or total numbers of units of product sold in the United States exceed the applicable numbers for an exemption.

[FR Doc. 94–5902 Filed 3–9–94; 4:18 pm]

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federal register

Monday
March 14, 1994

Part V

Postal Service

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 and Barcodes Rate Mailings; Final Rule

POSTAL SERVICE

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 and Barcoded Rate Mailings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual (DMM) requirements governing the preparation of the residual portion of second- and third-class letter-size automation rate mailings. This rule also includes an optional procedure for preparing the residual portion of First-Class ZIP+4 and barcoded letter-size mail and changes to Line 2 of AADC tray labels for letter-size mail.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Alexandrovich, (202) 268–2260.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1993, the Postal Service published a proposed rule in the **Federal Register** (58 FR 49402–49415) to require that the residual portion of second- and third-class letter-size automation rate mailings be sorted to the automated area distribution center (AADC) level.

As explained in the proposed rule, this change was needed to correct the processing problem that resulted when the requirement for a states and mixed-states presort of second- and third-class residual mail was eliminated as part of a larger change in preparation requirements that took effect March 21, 1993. At the time, the Postal Service did not anticipate the magnitude of the resulting increase in residual mail that must be processed at origin. This increase in non-presorted residual mail has exceeded the Postal Service's processing capabilities at many facilities, leading to considerable problems.

The proposed rule also introduced an additional preparation option for the residual portion of First-Class letter-size automation rate mailings and changed the tray labeling requirement for Line 2 of AADC trays of letter-size mail.

This final rule is intended to address the specific processing problem discussed in the proposed rule. As part of the ongoing process of re-examining the mailing standards in the DMM, the Postal Service plans to take a more comprehensive look at the standards for automation rate mail later this year, with a view to simplifying those standards.

Evaluation of Comments Received

The Postal Service received eight comments on the proposed rule, including five from mailing-related businesses, two from companies or corporations, and one from an individual. These comments are discussed below.

Package Size

Four commenters raised concerns relative to the preparation and processing of small packages. The original proposal did not contain a minimum package size for presortation of the residual portion of the mailing. Instead, it stated that residual packages must be prepared if two or more pieces in a mailing destinate to an AADC area. The commenters claimed that the creation of such small packages was burdensome to mailers and inefficient for the Postal Service. One mailer also stated that banding small packages results in damage to the mailpieces that may render them unsuitable for automated processing.

The Postal Service shares the commenters' concerns about package size. After consideration of the comments received, a decision was reached to require packaging of residual pieces only if 10 or more pieces destinate to an AADC area. The 10-piece minimum (which was formerly the minimum for state packages) balances concerns about extremely small packages against the Postal Service's need to reduce piece handlings of residual mail at origin. Residual pieces not meeting the 10-piece package minimum are to be placed in a working tray in AADC sequence.

Processing Efficiency of Packages

Three comments were received concerning the relative efficiency of processing residual AADC packages instead of full, unpackaged residual trays. The commenters suggested that the costs associated with unbanding residual packages prior to processing on automated equipment may outweigh any benefits the Postal Service receives through presorting. These mailers stated that mail in full trays is more suitable for induction into high-speed automated equipment than is mail in bundles. The commenters argued that the Postal Service might actually realize increased processing costs for the residual portion of mailings as a result of the proposed preparation changes.

The Postal Service has determined that presortation of the residual portion of a mailing will improve overall operating efficiency for the Postal Service relative to nonpresorted residual trays. Mixed-AADC trays will contain AADC packages that must be distributed at origin. However, no piece processing will be performed on this mail at the origin facility. Piece processing of residual mail at origin will be limited to working trays containing pieces that do not meet the 10-piece minimum to an AADC area. Thus, presortation of residual mail will virtually eliminate piece processing of this mail at the origin facility. Although there is some cost to handle packages, the Postal Service has concluded that this cost is outweighed by the need to correct the processing problems currently presented by piece handling of residual mail, as described in the proposed rule. Moreover, a significant proportion of the packages will not be handled at origin; for example, all residual mail in AADC trays will be routed directly to destination. Also, the new requirements allow for the creation of full AADC trays of residual mail that is not packaged.

Additional Mailer Operating Costs

Five commenters stated that the proposed changes would increase their operating costs. Two of these mailers remarked that the Postal Service is essentially transferring costs from mail processing plants to mailer plants. Two of the commenters expressed concerns about the costs of training their workers on the new requirements. One mailer commented that the proposed changes were incompatible with his operation and would require substantial and costly changes to his production processes.

The residual preparation requirements in this rule are comparable to those in effect prior to March 21, 1993, for automated rate second- and third-class letters prepared in sacks, and those still in effect for nonautomated presort second- and third-class letters. Prior to the March 21, 1993, change, mailers were required to prepare packages of residual second- and third-class automated rate letters and place them in state and mixed-states sacks. State sacks were then routed to a destination SDC for processing while mixed-states sacks were, in most cases, processed at the origin SCF.

This rule will require similar presortation of the residual portion of second- and third-class automated rate letter mailings. Like state packages and sacks, residual AADC packages and trays involve presortation of the residual portion of a mailing in order to bypass outgoing processing operations at the origin facility. Only mail in working trays will be processed at the origin SCF, as was mixed-states mail under the previous preparation requirements.

Requiring this presortation of the residual portion of a second- or third-class mailing is justified by the fact that some degree of worksharing is assumed in the basic rate paid for second- and third-class residual letters, a rate that is substantially reduced from the single-piece rate.

One commenter expressed concern about being required to prepare a large number of less-than-full residual AADC trays, which would be a waste of time and space. This final rule, which permits AADC packages of 10 or more pieces to be placed in a mixed-AADC tray if a full AADC tray cannot be prepared, and allows groups of fewer than 10 pieces to an AADC to be placed in working trays, avoids the potential problem raised by this commenter.

Creation of Nonuniform Preparation Standards for Different Classes of Automated Mail

One commenter stated that the proposed changes represented a retreat from the Postal Service's declared goal of simplified and standardized mail preparation requirements. This mailer remarked that adopting the proposed changes would necessitate the retraining of his workforce and lead to verification problems for the Postal Service.

Although the changes in this rule will make the required preparation of the residual portion of second- and third-class automated rate letters different from that for First-Class Mail, the Postal Service believes these changes are appropriate given the processing problems that led to the proposed rule and the discount mailers receive for basic rate mail in second- and third-class mailings. Furthermore, the final regulations are modified to allow First-Class mailers the option of preparing residual mail according to the residual sortation options required for second- and third-class mail. This modification will allow mailers the opportunity to presort first-, second-, and third-class mailings in a uniform manner.

Lower Minimum for 3-Digit Packages

One commenter recommended that the Postal Service reduce or eliminate the 50-piece minimum for qualifying 3-digit mail as a way to reduce the residual volume. This mailer proposed that the Postal Service eliminate the 3-digit qualifying minimum for automated mail if it is prepared in trays on SCF pallets and reduce the minimum to 10 pieces for mail that is 100 percent delivery point barcoded. The result, according to this mailer, would be a significant reduction in the amount of residual mail requiring processing at the origin plant.

Relaxation of the 50-piece minimum for qualifying 3-digit mail under package-based preparation is not being considered at the present time. Under tray-based preparation options, second- and third-class mail in SCF trays is not required to meet a 50-piece minimum for a 3-digit area. However, this rule gives mailers an option to prepare the residual portion of package-based mailings by 3-digit area with no minimum package size.

Limit Residual Preparation to Full AADC Trays

One commenter suggested that the Postal Service test the feasibility of limiting the preparation of residual mail to full AADC trays. Residual mail that remained after full AADC trays were prepared would not require sortation. The commenter contended that this limited approach might solve the processing problems caused by residual mail volumes.

Limiting residual preparation to full AADC trays would not adequately address the problem of excessive volumes of working residual mail at origin. Most AADC areas contain five or fewer 3-digit ZIP Code areas, making it very unlikely that full trays of residual mail could be prepared for these AADCs given that 3-digit packages must be prepared at 50 pieces. In order to relieve the problems associated with processing residual mail at origin, a more substantial presortation of the residual portion of a mailing than that suggested by this commenter is necessary.

Allocate Barcode Sorters to Residual Mail Processing

One commenter suggested that each of the 10 processing and distribution areas set up a centralized facility for processing residual mail. Under this scenario, origin processing plants would divert the residual portion of automation rate mailings to this centralized site for processing.

Equipment deployment decisions are based on originating and destinating volumes for all classes of mail within a processing and distribution plant's service area. Allocating equipment based on originating residual volumes of second- and third-class letters would result in sub-optimal utilization of automated equipment. The Postal Service believes that presortation of residual volumes, as described in this rule, is a reasonable and effective way to deal with the processing problems caused by piece processing of residual mail.

Summary of Changes

The following is a summary of the changes, by preparation option in DMM Module M.

ZIP+4 Presort and Barcoded Tray-Based Mailings (DMM M812 and M814)

This rule will require presortation of the residual portion of second- and third-class mailings by AADC area. These changes are optional for First-Class mailings. Changes in residual preparation are as follows:

- Full AADC trays must be prepared if enough pieces exist to fill a tray. Packaging is not required in full AADC trays.
- AADC packages must be prepared if 10 or more residual pieces destinate to an AADC area.
- Less-than-full AADC trays are not permitted except for optional overflow trays.
- AADC packages of 10 or more pieces not placed in a full AADC tray must be banded, labeled, and placed in a mixed-AADC tray.
- AADC packages must bear a pink Label A or optional endorsement line (OEL).
- AADC packages must be banded, except when placed in full AADC trays. Separator cards are not allowed in overflow AADC trays or in mixed-AADC trays.
- Mail remaining after preparing AADC packages must be placed in working trays in AADC sequence.

ZIP+4 Presort and Barcoded Package-Based Mailings (DMM M813, M815, and M816)

This rule will require that the residual portion of second- and third-class package-based mailings be prepared under one of the two options described below. Both options require presortation of residual pieces by AADC area. First-Class mailings may be prepared under either of these options, which together will replace the current AADC tray option, or under the existing ZIP Code sequencing and listing option or the physical separation option.

SCF/AADC Preparation Option

Under this option, the residual and qualifying portions of the mailing may be combined in SCF and AADC trays. Residual pieces must be sorted into AADC packages if 10 or more pieces destinate to an AADC area. All pieces that do not meet the 10-piece minimum are placed in working trays. In addition, mailers have the option of preparing residual mail into 3-digit packages prior to preparing required AADC packages. Three-digit residual packages must be labeled (green Label 3 or OEL or

separator card label) and placed in SCF trays. AADC packages must be packaged and labeled (pink Label A or OEL) and placed in AADC trays and mixed-AADC trays, except that pieces in full AADC trays containing only residual mail need not be packaged and labeled. AADC trays must be prepared if enough pieces exist to fill a tray. Less-than-full AADC trays are permitted. Mixed-AADC trays must be prepared unless all residual mail is trayed to the AADC level. Mixed-AADC trays are limited to AADC packages of residual mail. Pieces remaining after preparing and traying AADC packages are working mail and must be placed in working trays in AADC sequence. In barcoded three-tier package-based mailings prepared under M816, residual mail is not permitted in the 5-digit tier.

Separate AADC Sortation

Under this option, the residual portion of the mailing is presented separately from the qualifying portion in AADC, mixed-AADC, and working trays. AADC packages must be prepared if 10 or more pieces destinate to an AADC area, except that pieces in full AADC trays need not be packaged. AADC trays must be prepared if enough pieces exist to fill a tray. Less-than-full AADC trays are permitted. Remaining AADC packages must be placed in mixed-AADC trays. AADC packages must be labeled with a pink Label A or OEL. All pieces that do not meet the 10-piece minimum per AADC are placed in separate working trays in AADC sequence.

Labeling Changes

The AADC tray label for two-tier package-based preparation under DMM M815 is revised to change the position of the term "LTRS" on the second line so that it is consistent with other tray labels. The AADC tray label for 3-tier package-based preparation under DMM M816 is revised to delete the term "3D" when SCF/AADC residual preparation is used. Since these trays will contain both 3-digit and AADC packages, the description "3D" is no longer appropriate.

In addition, the labeling format for mixed-AADC and working trays is as follows:

• ZIP+4 mixed-AADC trays: On Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at a BMC/ASF. On Line 2 use class followed by ZIP+4 PRESORT PKGS.

• ZIP+4 working trays: On Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at a BMC/ASF. On Line 2 use class followed by ZIP+4 WORKING or ZIP+4 WKG.

• Barcoded mixed-AADC trays: On Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at a BMC/ASF. On Line 2 use class followed by LTRS BARCODED PKGS.

• Barcoded working trays: On Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at a BMC/ASF. On Line 2 use class followed by LTRS BARCODED WKG.

In view of the considerations discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 522(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

Module E: Eligibility

2. Make the following changes to Domestic Mail Manual (DMM) Module E.

* * * * *

E200 Second-Class Mail

* * * * *

E242 ZIP+4 Discounts

* * * * *

2.0 Qualifying Presort

2.1 Tray-Based

* * * * *

d. In AADC, mixed-AADC, and working trays, ZIP+4 coded or delivery point barcoded pieces can qualify for the A/G/J1 ZIP+4 rates; other pieces can qualify for the A/G/J1 presort rates.

* * * * *

E244 Barcoded Discounts (Letter-Sized Pieces)

* * * * *

2.0 Qualifying Presort

2.1 Tray-Based

* * * * *

d. In AADC, mixed-AADC, and working trays, delivery point barcoded pieces can qualify for the A/G/J1 Barcoded rates; subject to the applicable standards in C830 or C840, ZIP+4 coded non-delivery point barcoded pieces can qualify for the A/G/J1 ZIP+4 rates; other pieces qualify for the A/G/J1 presort rates.

* * * * *

E300 Third-Class Mail

* * * * *

E342 ZIP+4 Discounts

* * * * *

2.0 Qualifying Presort

2.1 Tray-Based

In tray-based presort mailings under M812, ZIP+4 coded or delivery point barcoded pieces in full or overflow 5-digit, 3-digit, and SCF trays can qualify for the 3/5 ZIP+4 rate; other pieces can qualify for the 3/5 presort rate. One less-than-full SCF tray for the origin SCF is permitted. ZIP+4 coded or delivery point barcoded pieces in AADC, mixed-AADC, or working residual trays can qualify for the basic ZIP+4 rate; other pieces can qualify for the basic presort rate.

* * * * *

E344 Barcoded Discounts (Letter-Sized Pieces)

* * * * *

2.0 Qualifying Presort

2.1 Tray-Based

* * * * *

c. In AADC, mixed-AADC, and working trays, delivery point barcoded pieces can qualify for the basic Barcoded rate; subject to the applicable standards in C830 or C840, ZIP+4 coded non-delivery point barcoded pieces can qualify for the basic ZIP+4 rate; other pieces qualify for the basic presort rates.

* * * * *

E350 Destination Entry Discounts

* * * * *

5.0 BMC Discount

* * * * *

5.3 Separate Sacks

Separate ADC, AADC, mixed-AADC, working, or residual trays; or separate SDC, state, and mixed-states sacks must be prepared for pieces eligible for the DBMC rate if the mailer includes them in that portion of the mailing claimed at the DBMC rate, and the facility to which the sacks, trays, or pallets are labeled is within the DBMC service area, except that, machinable parcels claimed at the DBMC rate and deposited at the corresponding facility may be placed in the same sack or on the same pallet as other correctly presorted machinable parcels not eligible for or not claimed at the DBMC rate.

* * * * *

Module M: Mail Preparation and Sortation

3. Make the following changes to DMM Module M.

M000 General Preparation Standards

* * * * *

M013 Optional Endorsement Lines

1.0 Use

1.1 Address Block, Label

[Revise the illustration to include AADC packages as shown below:]

On FIRM PACKAGES use.....FIRM 12345
On CARRIER ROUTE use.....CAR–RT–SORT**B–001
On 5-DIGIT PACKAGES use....5-DIGIT 12345
On OPTIONAL CITY PACKAGES use.....MIXED CITY 12345
(Use lowest 5-digit ZIP Code assigned to that city.)
On 3-DIGIT PACKAGES use.....3-DIGIT 771
On SCF PACKAGES use.....SCF 750
(Use correct 3-digit SCF code as shown in L002, Column B.)
On OPTIONAL SDC PACKAGES use.....ALL FOR SDC
On STATE PACKAGES use.....ALL FOR STATE
On MIXED-STATES PACKAGES use.....MIXED STATES
On AADC PACKAGES use....ALL FOR AADC
On RESIDUAL PACKAGES use.....WORKING

* * * * *

2.0 Format

* * * * *

2.6 ZIP Code

Except for carrier route packages (all classes), state distribution center (SDC), state, and mixed-states packages (second- and third-class), and AADC and working residual packages (automation rate mail), the optional endorsement line must include the applicable ZIP Code information. Mixed-states bundles of fourth-class bound printed matter must have facing slips as specified in M407.

* * * * *

M020 Packages and Bundles

* * * * *

3.0 Additional Standards—Automation Rate Mailings

* * * * *

3.3 Prohibited

Packages must not be prepared in full trays in tray-based mailings of larger than postcard-size pieces except in AADC and mixed-AADC trays and as permitted by standard for oversize pieces.

* * * * *

3.6 Separator Cards

Separator cards:

a. Must be used for First-Class Mail to delineate groups of 100 pieces within trays of residual mail if the physical separation option is chosen.

* * * * *

3.7 Identification

[Revise the last sentence to read as follows:]

Residual pieces of First-Class Mail may be prepared using separator cards as permitted by standard.

* * * * *

M800 Automation-Compatible Mail

M810 Letter-Size Mail

M812 ZIP+4 Presort—Tray-Based Mailings

1.0 Basic Standards

* * * * *

1.3 Grouping

[Insert the following at the end of this section:]

c. For pieces for the same AADC area in working trays.

* * * * *

1.5 Packaging

Separator cards are permitted only under 4.4. Packaging is required:

a. For mailings consisting entirely of pieces that qualify by size for First-Class card rates, regardless of the actual rate claimed or class of mail. Package labels are required in less-than-full trays.

b. For mail in overflow AADC trays, in mixed-AADC trays, and in a less-than-full working tray. Appropriate package labels are required in these trays.

1.6 No Packaging

Packaging may not be used for larger than card-size pieces, except that:

* * * * *

[Delete current 1.6c and replace with the following:]

c. Mail in AADC trays may be packaged and mail in mixed-AADC trays must be packaged into AADC packages.

d. Mail in a less-than-full working tray under 4.2 or First-Class residual tray under 4.3 or 4.4 must be packaged.

* * * * *

4.0 Residual Mail

4.1 Definition, Standards

Pieces remaining after packages and trays are prepared under 2.0 or 3.0 are residual (nonqualifying) mail. Residual second- or third-class mail must be prepared under 4.2. Residual First-Class Mail must be prepared under 4.2, 4.3, or 4.4 except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times. All residual mail must be presented under 4.5.

4.2 AADC Sortation

Prepare residual pieces as follows:

a. All pieces must be sorted by AADC area using L804 (or, for automated site mailings, L803).

b. Quantities of 10 or more pieces for an AADC area must be prepared as an AADC package (or, if possible, a full AADC tray). Packaging is not required in full AADC trays. AADC packages of fewer than 10 pieces are not permitted.

c. All AADC packages must be trayed in AADC or mixed-AADC trays. Pieces remaining after preparing full AADC trays and AADC packages must be placed in separate working trays.

d. Pieces in less-than-full AADC overflow trays and in all mixed-AADC trays must be packaged and labeled as AADC packages using a pink Label A or OEL. Separator cards are not permitted.

e. Pieces in working trays must be grouped by AADC area. Pieces in a less-than-full working tray must be prepared in working packages up to 6 inches thick making as few packages as possible without regard to AADC breaks. Separator cards are not permitted. Label packages in less-than-full working trays with either a facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

f. A piece count listing must be provided for all residual pieces that shows by tray level and AADC area (listed by numeric AADC code from the labeling list in L804 or, for automated

site mailings, L803) the number of pieces eligible for each rate and the number of pieces with and without a ZIP+4 code.

g. Tray size:

(1) AADC: required full trays; one less-than-full overflow tray permitted per destination per mailing.

(2) Mixed-AADC: required full trays; one less-than-full tray permitted.

(3) Working: required full trays; one less-than-full tray permitted.

h. Residual presort sequence and Line 1 labeling:

(1) AADC (required); use L804 (or, for automated site mailings, L803) on Line 1.

(2) Mixed-AADC (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

(3) Working (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

i. On Line 2: class (FCM, 2C, NEWS, or 3C), followed by:

(1) For AADC trays: AADC ZIP+4 PRESORT.

(2) For mixed-AADC trays: ZIP+4 PRESORT PKGS.

(3) For working trays: ZIP+4 WORKING or ZIP+4 WKG.

4.3 Sequencing, Listing—First-Class Mail Only

[*Insert current M812.4.2 and renumber as M812.4.3. Revise the first sentence to read as follows:*]

First-Class residual pieces may be sequenced by ZIP Code and presented with a listing:

[*Delete renumbered 4.3f; reletter 4.3g and h as 4.3f and g. Revise renumbered and relettered 4.3g to read:*]

g. For Line 2: FCM LTRS followed by either ZIP+4 WORKING or ZIP+4 WKG.

4.4 Separation by Rate—First-Class Mail Only

[*Insert current M812.4.3 and renumber as M812.4.4. Revise the first sentence to read as follows:*]

First-Class residual pieces may be separated by rate qualification:

[*Delete "First-Class" in renumbered 4.4a(1) and 4.4a(3). Delete renumbered 4 4a(4) and a(5). Revised renumbered 4.4d to read:*]

d. For Line 2: FCM followed by:

(1) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(2) On trays of other mail: WORKING or WKG.

4.5 Presentation

When presented to the USPS, trays of residual mail prepared under 4.3 or 4.4 must be separate from trays of qualifying mail.

5.0 Documentation

* * * * *

5.4 Standards. [*In current 812.5.4, change the reference "4.2" to "4.2 or 4.3" and change the reference "4.3" to "4.4."*]

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5.6 ZIP Code Option

Under the ZIP Code option, individual entries for each type of tray destination must be listed sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit trays; by lowest assigned 5-digit ZIP Code for city trays (second-class only); by 3-digit ZIP Code for 3-digit, SCF, and First-Class residual trays under 4.3; by the 3-digit AADC code (preceded by "AADC") in L804 (or L803 for automated sites) for AADC, mixed-AADC, and working trays under 4.2. Volume in overflow trays must be included in the corresponding entry even though there is a list of overflow trays.

5.7 Tray Label Option

Under the tray label option, individual entries for each tray must be listed sequentially by the unique tray number on each label or by Line 1 on the label. The contents of each overflow tray is reported as an individual entry even though there is a list of overflow trays. Each tray entry must be subdivided as needed to report volume sequentially by ZIP Code in the tray: by 5-digit ZIP Code for 5-digit trays; by lowest assigned 5-digit ZIP Code for city trays (second-class only); by 3-digit ZIP Code for 3-digit, SCF, and First-Class residual trays under 4.3; by the 3-digit AADC code (preceded by "AADC") in L804 (or L803 for automated sites) for AADC, mixed-AADC, and working trays under 4.2.

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M813 ZIP+4 Presort—Package-Based Mailings

1.0 Basic Standards

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1.3 Packaging

[*Add the following sentence to the end of this section:*]

Packaging (no separator cards) is required in AADC trays (except for full AADC trays containing only residual packages), mixed-AADC trays, and less-than-full working or residual trays.

1.4 No Packaging

Packages or separator cards are not required for larger than card-size pieces in full 5-digit trays, full AADC trays containing only residual AADC packages, full working trays under 5.2 and 5.3, and full First-Class residual trays under 5.4.

* * * * *

1.5 Separator Cards

Separator cards may not be used in a less-than-full tray for the entry SCF, in AADC trays, in mixed-AADC trays, in working trays, or in residual trays unless permitted by 5.0.

* * * * *

5.0 Residual Mail

5.1 Definition

Pieces remaining after packages and trays are prepared under 2.0 through 4.0 are residual (nonqualifying) mail. Residual second- and third-class mail must be prepared under an option in 5.2 and 5.3. Residual First-Class Mail must be prepared under 5.2 and 5.3, or 5.4, or 5.5, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times. Residual mail from automated site mailings under 4.0 is subject to specific instructions where applicable. All residual mail must be presented under 5.6.

5.2 AADC Residual Preparation Options

Residual second- and third-class mail must be prepared under one of these options and in accordance with 5.3. First-Class Mail may be prepared under one of these options and 5.3 if not prepared under 5.4 or 5.5.

a. Separate AADC Preparation. Residual mail is trayed separately from qualifying mail. Groups of 10 or more residual pieces to an AADC area in L804 (or L803 or automated site preparation) are placed in AADC trays and mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. Residual pieces in mixed-AADC trays and in less-than-full AADC trays must be prepared and labeled as AADC packages. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 5.3.

b. Intermixed SCF/AADC Preparation Some residual mail is trayed with qualifying mail. Groups of 10 or more residual pieces to the same AADC area

in L804 (or L803 for automated site preparation) are packaged by AADC and placed in AADC trays (with qualifying mail) and in mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages. At the mailer's option, residual mail may be packaged by 3-digit ZIP Code and placed in SCF trays (remaining pieces sorted by AADC). A less-than-full tray for the origin SCF containing only residual packages is allowed. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 5.3. First-Class automated site mailings in which the residual portion contains pieces not listed in L801 must not use this option.

5.3 AADC Residual Preparation

Subject to 5.1 and 5.2, residual mail must be prepared as follows:

a. Package size:

(1) 3-digit (option 5.2b only): optional with no minimum for residual pieces in single- or multi-3-digit SCF trays.

(2) AADC: required at 10 pieces for residual pieces in mixed-AADC trays, in less-than-full AADC trays, and in AADC trays (under option 5.2b) that also contain qualifying mail. Packages of fewer pieces not permitted. Use L804 (or L803 for automated site preparation).

(3) Working: required grouping of pieces by AADC in working trays. Use L804 (or L803 for automated site preparation). Packaging required only in a less-than-full working tray as follows: Prepare as few packages as possible, each not more than 6 inches thick, without regard to AADC breaks.

b. Package presort and labeling:

(1) Optional 3-digit (only for option 5.2b): use green Label 3 or OEL.

(2) AADC (required, except in full residual AADC trays): use pink Label A or OEL.

(3) Working (required in less-than-full working tray): use facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

c. Tray size:

(1) Optional 3-digit (only for single 3-digit SCFs in L002, Column A, identified with three bullets and prepared under option 5.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the single 3-digit origin SCF. This tray is not available for residual of automated site mailings.

(2) Optional SCF (only for option 5.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the origin SCF. (For automated site mailings, one less-than-full tray for the origin SCF is permitted only if the origin SCF is listed in L802; see 4.5b.)

(3) AADC: required if enough pieces to fill tray; less-than-full and overflow trays permitted.

(4) Mixed-AADC: required full trays; one less-than-full tray permitted.

(5) Working: required full trays; one less-than-full tray permitted.

d. Tray presort sequence and Line 1 labeling:

(1) Optional 3-digit (only for single 3-digit SCFs under option 5.2b); use L002, Column A (facilities identified with three bullets), on Line 1. This tray is not available for the residual mail of automated site mailings.

(2) Optional SCF (only for option 5.2b); use L802 on Line 1 for automated site mailings; for other mailings use L002, Column B, on Line 1 for 3-digit areas listed in Column C.

(3) AADC (required); use L803 on Line 1 for automated site mailings; for other mailings, use L804 on Line 1.

(4) Mixed-AADC (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

(5) Working (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

e. Line 2: class (FCM, 2C, NEWS, or 3C), followed by:

(1) On 3-digit and SCF trays (option 5.2b only): ZIP+4 PRESORT.

(2) On AADC trays: AADC ZIP+4 PRESORT.

(3) On mixed-AADC trays: ZIP+4 PRESORT PKGS.

(4) On working trays: ZIP+4 WORKING or ZIP+4 WKG.

5.4 Sequencing, Grouping—First-Class Mail Only

[Insert text of current 5.2 and renumber as 5.4. Revise the first sentence to read as follows:]

First-Class residual pieces may be sequenced by ZIP Code and presented with a listing:

[Delete renumbered 5.4f; reletter 5.4g and h as 5.4f and g. Revise renumbered and relettered 4.3g to read:]

g. For Line 2: FCM LTRS followed by ZIP+4 WORKING or ZIP+4 WKG.

5.5 Separation by Rate—First-Class Mail Only

[Insert text of current 5.3 and renumber as 5.5. Revise the first sentence to read as follows:]

First-Class residual pieces may be separated by rate qualification:

[Delete the phrase "First-Class" in renumbered 5.5a(1) and 5.5a(3). Delete renumbered 5.5a(4) and 5.5a(5). Revise renumbered 5.5d as follows:]

d. For Line 2: FCM followed by:

(1) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(2) On trays of other mail: WORKING or WKG.

5.6 Presentation

When presented to the USPS, trays of residual mail must be separate from trays of qualifying mail except that when prepared under 5.2b, 3-digit, SCF and AADC trays containing both qualifying and residual pieces are grouped with trays of qualifying mail.

6.0 Documentation

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6.3 Standards

Documentation must meet the basic standards in P012 and those below. Residual mail is included in the documentation if prepared under 5.2 and 5.3, or 5.4, or in the summary alone if prepared under 5.5. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

6.4 Segmentation, Labeling

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). A residual segment is not required for First-Class Mail prepared under 5.5. Each tier must be further segmented by type of package/grouping (5-digit, 3-digit, AADC, as applicable) under 6.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for residual mail under 5.2 and 5.3) reported in a continuous sequential list under 6.6 within each tier listing. Under either option, data must be presented as shown in 6.7 and 6.8.

6.5 Type of Package Option

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 5.4; and, for AADC packages and AADC

groups (in working trays) under 5.2 and 5.3, by the applicable 3-digit AADC code in L803 (for automated site mailings) or L804 (AADC entries must be preceded by "AADC").

6.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code within each tier, regardless of package type: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 5.4; and, for AADC packages and AADC groups (in working trays) under 5.2 and 5.3, by the applicable 3-digit AADC code in L803 (for automated site mailings) or L804. AADC entries must be preceded by the prefix "AADC." For second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

* * * * *

M814 Barcoded—Tray-Based Mailings

1.0 Basic Standards

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1.2 Grouping

[Add the following at the end of this section:]

c. For pieces for the same AADC area in working trays under 3.2.

* * * * *

1.4 Packaging

Separator cards are permitted only under 3.4. Packaging is required:

a. For mailings consisting entirely of pieces that qualify by *size* for First-Class card rates, regardless of the actual rate claimed or class of mail. Package labels are required in less-than-full trays.

b. For mail in overflow AADC trays, in mixed-AADC trays, and in a less-than-full working tray. Appropriate package labels are required.

1.5 No Packaging

Packaging may not be used for larger than card-size pieces, except that:

* * * * *

[Delete current 1.5c and replace with the following:]

c. Mail in AADC trays may be packaged and mail in mixed-AADC trays must be packaged into AADC packages.

d. Mail in a less-than-full working tray under 3.2 or First-Class residual tray under 3.3 or 3.4 must be packaged.

* * * * *

3.0 Residual Mail

3.1 Definition, Standards

Pieces remaining after packages and trays are prepared under 2.0 are residual (nonqualifying) mail. Residual second- or third-class mail must be prepared under 3.2. Residual First-Class Mail must be prepared under 3.2, 3.3 or 3.4, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times. All residual mail must be presented under 3.5.

3.2 AADC Sortation

Prepare residual pieces as follows:

a. All pieces must be sorted by AADC area using L804.

b. Quantities of 10 or more pieces for an AADC area must be prepared as an AADC package (or, if possible, a full AADC tray). Packaging is not required in full AADC trays. AADC packages of fewer than 10 pieces are not permitted.

c. All AADC packages must be trayed in AADC or mixed-AADC trays. Pieces remaining after preparing full AADC trays and AADC packages must be placed in separate working trays.

d. Pieces in less-than-full AADC overflow trays and in all mixed-AADC trays must be packaged and labeled as AADC packages using a pink Label A or OEL. Separator cards are not permitted.

e. Pieces in working trays must be grouped by AADC area. Pieces in a less-than-full working tray must be prepared in working packages up to 6 inches thick making as few packages as possible without regard to AADC breaks. Separator cards are not permitted. Label packages in less-than-full working trays with either a facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

f. A piece count listing must be provided for all residual pieces that shows by tray level and AADC area (listed by numeric AADC code from the labeling list in L804) the number of pieces eligible for each rate and the number of pieces with a delivery point barcode, the number of pieces without a delivery point barcode that qualify for ZIP+4 rates, and the number of other pieces.

g. Tray size:

(1) AADC: required full trays; one less-than-full overflow tray permitted per destination per mailing.

(2) Mixed-AADC: required full trays; one less-than-full tray permitted.

(3) Working: required full trays; one less-than-full tray permitted.

h. Residual presort sequence and Line 1 labeling:

(1) AADC (required); use L804 on Line 1.

(2) Mixed-AADC (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

(3) Working (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

i. On Line 2: class (FCM, 2C, NEWS, or 3C), followed by:

(1) For AADC trays: LTRS AADC BARCODED.

(2) For mixed-AADC trays: LTRS BARCODED PKGS.

(3) For working trays: LTRS BARCODED WKG.

3.3 Sequencing, Grouping—First-Class Mail Only

[Insert current M814.3.2 and renumber as M814.3.3. Revise the first sentence to read as follows:]

First-Class residual pieces may be sequenced by ZIP Code and presented with a listing:

[Delete renumbered 3.3f; reletter 3.3g and 3.3h as 3.3f and 3.3g, respectively. Revise renumbered and relettered 3.3g to read:]

g. For Line 2: FCM LTRS BARCODED WKG.

3.4 Separation by Rate—First-Class Mail Only

[Insert current M814.3.3 and renumber as M814.3.4. Revise the first sentence to read as follows:]

First-Class residual pieces may be separated by rate qualification.

[Delete "First-Class" in renumbered 3.4a(1) and 3.4a(3). Delete renumbered 3.4a(4) and 3.4a(5). Revise renumbered 3.4d to read:]

d. For Line 2: FCM followed by:

(1) On trays of delivery point barcoded mail: LTRS BARCODED WKG.

(2) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(3) On trays of other mail: WORKING or WKG.

3.5 Presentation

When presented to the USPS, trays of residual mail prepared under 3.3 or 3.4 must be separate from trays of qualifying mail.

4.0 Documentation

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4.4 Standards

[In current 814.4.4, change the reference "3.2" to "3.2 or 3.3," and change the reference "3.3" to "3.4."]

4.5 Segmentation, Labeling

[In the last sentence, replace "3.2," with "4.6"; replace "3.3" with "4.7"; replace "5.8 and 5.9" with "4.8 and 4.9."]

4.6 ZIP Code Option

Under the ZIP Code option, individual entries for each type of tray destination must be listed sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit trays; by lowest assigned 5-digit ZIP Code for city trays (second-class only); by 3-digit ZIP Code for 3-digit, SCF, and First-Class residual trays under 3.3; by the 3-digit AADC code (preceded by "AADC") in L804 for AADC, mixed-AADC, and working trays under 3.2. Volume in overflow trays must be included in the corresponding entry even though there is a list of overflow trays.

4.7 Tray Label Option

Under the tray label option, individual entries for each tray must be listed sequentially by the unique tray number on each label or by Line 1 on the label. The contents of each overflow tray is reported as an individual entry even though there is a list of overflow trays. Each tray entry must be subdivided as needed to report volume sequentially by ZIP Code in the tray: by 5-digit ZIP Code for 5-digit trays; by lowest assigned 5-digit ZIP Code for city trays (second-class only); by 3-digit ZIP Code for 3-digit, SCF, and First-Class residual trays under 3.3; by the 3-digit AADC code (preceded by "AADC") in L804 for AADC, mixed-AADC, and working trays under 3.2.

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M815 Barcoded—Two-Tier Package-Based Mailings

1.0 Basic Standards

* * * * *

1.2 Packaging

[Add the following sentence to the end of this section:]

Packaging (no separator cards) is required in AADC trays (except for full AADC trays containing only residual packages), mixed-AADC trays, and less-than-full working or residual trays.

1.3 No Packaging

Packages or separator cards are not required for larger than card-size pieces in full 5-digit trays, full AADC trays containing only residual AADC packages, full working trays under 4.2 and 4.3, and full First-Class residual trays under 4.4.

* * * * *

1.5 Separator Cards

Separator cards must not be used in a less-than-full tray for the entry SCF, in AADC trays, in mixed-AADC trays, in working trays, or in residual trays unless permitted by 5.0.

* * * * *

4.0 Residual Mail

4.1 Definition

Pieces remaining after packages and trays are prepared under 2.0 and 3.0 are residual (nonqualifying) mail. Residual second- and third-class mail must be prepared under an option in 4.2 and 4.3. Residual First-Class Mail must be prepared under 4.2 and 4.3, or 4.4, or 4.5, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times. All residual mail must be presented under 4.6.

4.2 AADC Residual Preparation Options

Residual second- and third-class mail must be prepared under one of these options and in accordance with 4.3. First-Class Mail may be prepared under one of these options and 4.3 if not prepared under 4.4 or 4.5.

a. Separate AADC Preparation. Residual mail is trayed separately from qualifying mail. Groups of 10 or more residual pieces to an AADC area in L804 are placed in AADC trays and mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. Residual pieces in mixed-AADC trays and in less-than-full AADC trays must be prepared and labeled as AADC packages. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 4.3.

b. Intermixed SCF/AADC Preparation. Some residual mail is trayed with qualifying mail. Groups of 10 or more residual pieces to the same AADC area in L804 are packaged by AADC and placed in AADC trays (with qualifying mail) and in mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages. At the mailer's option, residual mail may be packaged by 3-digit ZIP Code and placed in SCF trays (remaining pieces sorted by AADC). A less-than-full tray for the origin SCF containing only residual packages is allowed. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 4.3.

4.3 AADC Residual Preparation

Subject to 4.1 and 4.2, residual mail must be prepared as follows:

a. Package size:

(1) 3-digit (option 4.2b only): optional with no minimum for residual pieces in single- or multi-3-digit SCF trays.

(2) AADC: required at 10 pieces per AADC (use L804) for residual pieces in mixed-AADC trays, in less-than-full AADC trays, and in AADC trays (under option 4.2b) that also contain qualifying mail. Packages of fewer pieces not permitted.

(3) Working: required grouping of pieces by AADC (use L804) in working trays. Packaging required only in a less-than-full working tray as follows: prepare as few packages as possible, each not more than 6 inches thick, without regard to AADC breaks.

b. Package presort and labeling:

(1) Optional 3-digit (only for option 4.2b): use green Label 3 or OEL.

(2) AADC (required, except in full residual AADC trays): use pink Label A or OEL.

(3) Working (required in less-than-full working tray): use facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

c. Tray size:

(1) Optional 3-digit (only for single 3-digit SCFs in L002, Column A, identified with three bullets and prepared under option 4.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the single 3-digit origin SCF.

(2) Optional SCF (only for option 4.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the origin SCF.

(3) AADC: required if enough pieces to fill tray; less-than-full and overflow trays permitted.

(4) Mixed-AADC: required full trays; one less-than-full tray permitted.

(5) Working: required full trays; one less-than-full tray permitted.

d. Tray presort sequence and Line 1 labeling:

(1) Optional 3-digit (only for single 3-digit SCFs under option 4.2b); use L002, Column A (facilities identified with three bullets), on Line 1.

(2) Optional SCF (only for option 4.2b); use L002, Column B, on Line 1 for 3-digit areas listed in Column C.

(3) AADC (required); use L804 on Line 1.

(4) Mixed-AADC (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

(5) Working (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

e. Line 2: class (FCM, 2C, NEWS, or 3C), followed by LTRS and:

(1) On 3-digit trays (only single 3-digit SCFs under option 4.2b) and SCF trays (option 4.2b only): BARCODED.

(2) On AADC trays: AADC BARCODED.

(3) On mixed-AADC trays: BARCODED PKGS.

(4) On working trays: BARCODED WKG.

4.4 Sequencing, Grouping—First-Class Mail Only

[Insert text of current 4.2 and renumber as 4.4. Revise the first sentence to read as follows:]

First-Class residual pieces may be sequenced by ZIP Code and presented with a listing:

[Delete renumbered 4.4f. Reletter 4.4g and h as 4.4f and g. Revise renumbered and relettered 4.4g to read:]

g. For Line 2: FCM LTRS BARCODED WKG.

4.5 Separation by Rate—First-Class Mail Only

[Insert text of current 4.3 and renumber as 4.5. Revise the first sentence to read as follows:]

First-Class residual pieces may be separated by rate qualification:

[Delete the phrase "First-Class" in renumbered 4.5a(1) and 4.5a(3). Delete renumbered 4.5a(4) and 4.5a(5). Revise renumbered 4.5d as follows:]

d. For Line 2: FCM followed by:

(1) On trays of delivery point barcoded mail: LTRS BARCODED WKG.

(2) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(3) On trays of other mail: WORKING or WKG.

4.6 Presentation

When presented to the USPS, trays of residual mail must be separate from trays of qualifying mail except that when prepared under 4.2b, 3-digit, SCF, and AADC trays containing both qualifying and residual pieces are grouped with trays of qualifying mail.

5.0 Documentation

* * * * *

5.2 Standards

[In current M815.5.2, revise the second sentence to read as follows:]

Residual pieces are included in the documentation if prepared under 4.2 and 4.3, or under 4.4, and included in the summary alone if prepared under 4.5.

* * * * *

5.4 Segmentation, Labeling

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). A residual segment is not required for First-Class Mail prepared under 4.5. Each tier must be further segmented by type of package/grouping (5-digit, 3-digit, AADC, as applicable) under 5.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for residual mail under 4.2 and 4.3) reported in a continuous sequential list under 5.6 within each tier listing. Under either option, data must be presented as shown in 5.7 and 5.8.

5.5 Type of Package Option

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 4.4; and, for AADC packages and AADC groups (in working trays) under 4.2 and 4.3, by the applicable 3-digit AADC code in L804 (AADC entries must be preceded by "AADC").

5.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code within each tier, regardless of package type: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 4.4; and, for AADC packages and AADC groups (in working trays) under 4.2 and 4.3, by the applicable 3-digit AADC code in L804 (AADC entries must be preceded by "AADC"). For second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

* * * * *

M816 Barcoded—Three-Tier Package-Based Mailings

1.0 Basic Standards

* * * * *

1.2 Packaging

[Replace the last sentence with the following:]

Packaging or separator cards are required for other pieces placed in city, 3-digit, or SCF trays except as provided under 1.3 for 3-digit tier preparation. Packaging (no separator cards) is required in AADC trays except for full AADC trays in the 3-digit presort tier containing only residual packages, mixed-AADC trays, and in less-than-full working or residual trays.

1.3 No Packaging

Packaging or separator cards are not required for larger than card-size pieces in full 5-digit trays in the 5-digit tier; nor in the 3-digit tier in full city, full 3-digit, full SCF, and full AADC trays containing only residual AADC packages; nor in full working trays under 6.2 and 6.3, and full First-Class residual trays under 6.4.

* * * * *

1.4 Separator Cards

Separator cards must not be used in a less-than-full tray for the origin SCF, in AADC trays, in mixed-AADC trays, in working trays, or in residual trays unless permitted by 6.0.

* * * * *

4.0 Package Preparation—3-Digit Tier

* * * * *

4.2 Presort and Labeling

Package presort sequence and labeling:

a. City (optional; for second-class only): package labels not required except that package labels required in AADC trays if residual is prepared under 6.2b (use yellow Label C or OEL).

b. 3-digit (required: optional for First-Class Mail not claimed at the 3-digit Barcoded rate): package labels not required except that package labels required in AADC trays if residual is prepared under 6.2b (use green Label 3 or OEL).

* * * * *

5.0 Tray Preparation—3-Digit Tier

* * * * *

5.4 Line 2

Line 2: class of mail and:

* * * * *

c. On AADC trays: LTR AADC 3D BARCODE, except for mailings in which residual mail is prepared under 6.2b use LTRS AADC BARCODED.

* * * * *

6.0 Residual Mail

6.1 Definition

Pieces remaining after packages and trays are prepared under 2.0 through 5.0 are residual (nonqualifying) mail. Residual second- and third-class mail must be prepared under an option in 6.2 and 6.3. Residual First-Class Mail must be prepared under 6.2 and 6.3, or 6.4, or 6.5, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times. All residual mail must be presented under 6.6.

6.2 AADC Residual Preparation Options

Residual second- and third-class mail must be prepared under one of these options and in accordance with 6.3. First-Class Mail may be prepared under one of these options and 6.3 if not prepared under 6.4 or 6.5.

a. Separate AADC Preparation. Residual mail is trayed separately from qualifying mail. Groups of 10 or more residual pieces to an AADC area in L804 are placed in AADC trays and mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. Residual pieces in mixed-AADC trays and in less-than-full AADC trays must be prepared and labeled as AADC packages. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 6.3.

b. Intermixed SCF/AADC Preparation. Some residual mail is trayed with qualifying mail in the 3-digit tier. Groups of 10 or more residual pieces to the same AADC area in L804 are packaged by AADC and placed in AADC trays (with qualifying mail) in the 3-digit tier and in separate mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages. At the mailer's option, residual mail may be packaged by 3-digit ZIP Code and placed in SCF trays within the 3-digit tier (remaining pieces sorted by AADC). A less-than-full tray for the origin SCF in the 3-digit tier containing only residual packages is allowed. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 6.3.

6.3 AADC Residual Preparation

Subject to 6.1 and 6.2, residual mail must be prepared as follows:

a. Package size:

(1) 3-digit (option 6.2b only): optional with no minimum for residual pieces in single- or multi-3-digit SCF trays in the 3-digit presort tier.

(2) AADC: required at 10 pieces per AADC (use L804) for residual pieces in mixed-AADC trays, in less-than-full AADC trays, and in AADC trays (under option 6.2b) that also contain qualifying mail. Packages of fewer pieces not permitted.

(3) Working: required grouping of pieces by AADC (use L804) in working trays. Packaging required only in a less-than-full working tray as follows: prepare as few packages as possible, each not more than 6 inches thick, without regard to AADC breaks.

b. Package presort and labeling:

(1) Optional 3-digit (only for option 6.2b): use green Label 3 or OEL.

(2) AADC (required except in full residual AADC trays): use pink Label A or OEL.

(3) Working (required in less-than-full working tray): use facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

c. Tray size:

(1) Optional 3-digit (only for single 3-digit SCFs in L002, Column A, identified with three bullets and prepared under option 6.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the single 3-digit origin SCF.

(2) Optional SCF (only for option 6.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the origin SCF.

(3) AADC: required if enough pieces to fill tray; less-than-full and overflow trays permitted.

(4) Mixed-AADC: required full trays; one less-than-full tray permitted.

(5) Working: required full trays; one less-than-full tray permitted.

d. Tray presort sequence and Line 1 labeling:

(1) Optional 3-digit (only for single 3-digit SCFs under option 6.2b); use L002, Column A (facilities identified with three bullets), on Line 1.

(2) Optional SCF (only for option 6.2b); use L002, Column B, on Line 1 for 3-digit areas listed in Column C.

(3) AADC (required); use L804 on Line 1.

(4) Mixed-AADC (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

(5) Working (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

e. Line 2: class (FCM, 2C, NEWS, or 3C), followed by LTRS and:

(1) On 3-digit trays (only single 3-digit SCFs under option 6.2b) and SCF trays (option 6.2b only): 3DG BARCODED.

(2) On AADC trays: AADC BARCODED.

(3) On mixed-AADC trays: BARCODED PKGS.

(4) On working trays: BARCODED WKG.

6.4 Sequencing, Grouping—First-Class Mail Only

[Insert text of current 6.2 renumber as 6.4. Revise the first sentence to read:]

First-Class residual pieces may be sequenced by ZIP Code and prepared with a listing:

[Delete renumbered 6.4f. Reletter 6.4 g and h as 6.4 f and g. Revise renumbered and relettered 6.4g to read:]

g. For Line 2: FCM LTRS BARCODED WKG.

6.5 Separation by Rate—First-Class Mail Only

[Insert text of current 6.3 and renumber as 6.5. Revise the first sentence to read as follows:]

First-Class residual pieces may be separated by rate qualification:

[Delete the phrase "First-Class" in renumbered 6.5a(1) and 6.5a(3). Delete renumbered 6.5a(4) and 6.5a(5). Revise renumbered 6.5d as follows:]

d. For Line 2: FCM followed by:

(1) On trays of delivery point barcoded mail: LTRS BARCODED WKG.

(2) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(3) On trays of other mail: WORKING or WKG.

6.6 Presentation

When presented to the USPS, trays of residual mail must be separate from trays of qualifying mail except that when prepared under 6.2b, 3-digit, SCF, and AADC trays in the 3-digit presort tier that contain both qualifying and residual pieces are grouped with trays of qualifying mail.

7.0 Documentation

* * * * *

7.3 Standards

Documentation must meet the basic standards in P012 and those below. Residual mail is included in the documentation if prepared under 6.2 and 6.3, or 6.4, or in the summary alone if prepared under 6.5. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

7.4 Segmentation, Labeling

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). A residual segment is not required for First-Class Mail if separated under 6.5. Each tier must be further segmented by type of package/grouping (5-digit, 3-digit, AADC, as applicable) under 7.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for residual mail under 6.2 and 6.3) reported in a continuous sequential list under 7.6 within each tier listing. Under either option, data must be presented as shown in 7.7 and 7.8.

7.5 Type of Package Option

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 6.4; and, for AADC packages and AADC groups (in working trays) by the applicable 3-digit AADC code in L804 (AADC entries must be preceded by "AADC").

7.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code within each qualification tier, regardless of package type: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 6.5; and, for AADC packages and AADC groups (in working trays) under 6.2 and 6.3, by the applicable 3-digit AADC code in L804 (AADC entries must be preceded by "AADC"). For second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

* * * * *

[FR Doc. 94–5866 Filed 3–11–94; 8:45 am]

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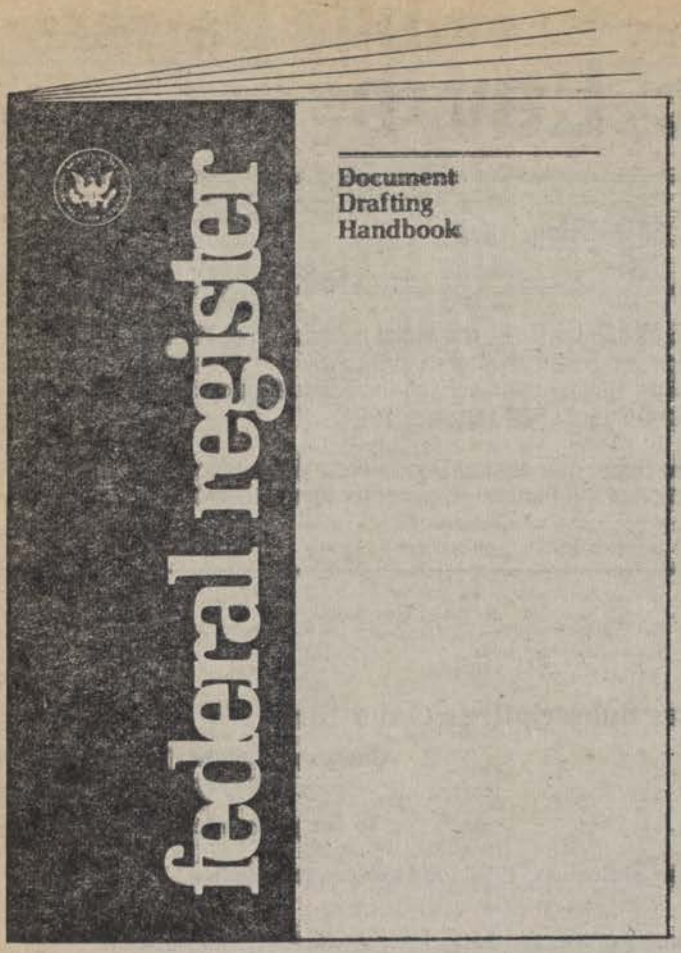

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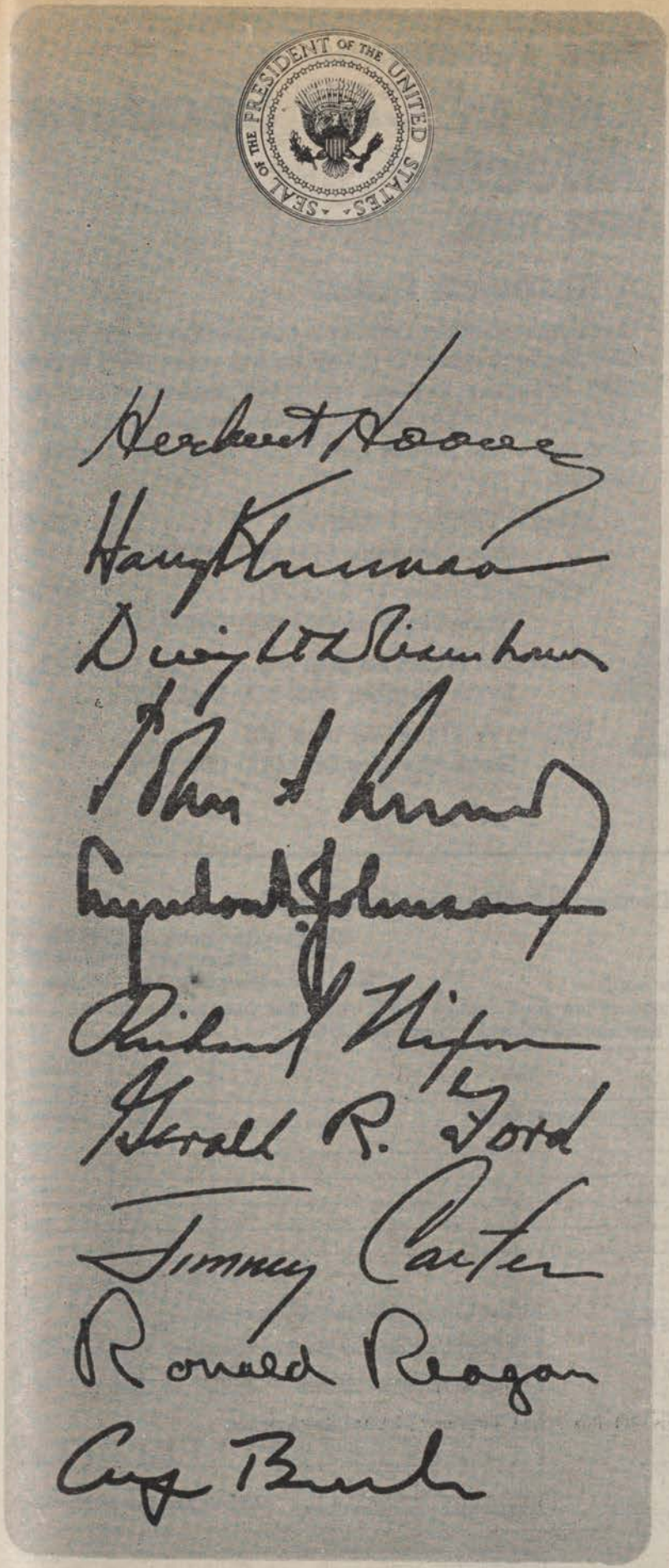

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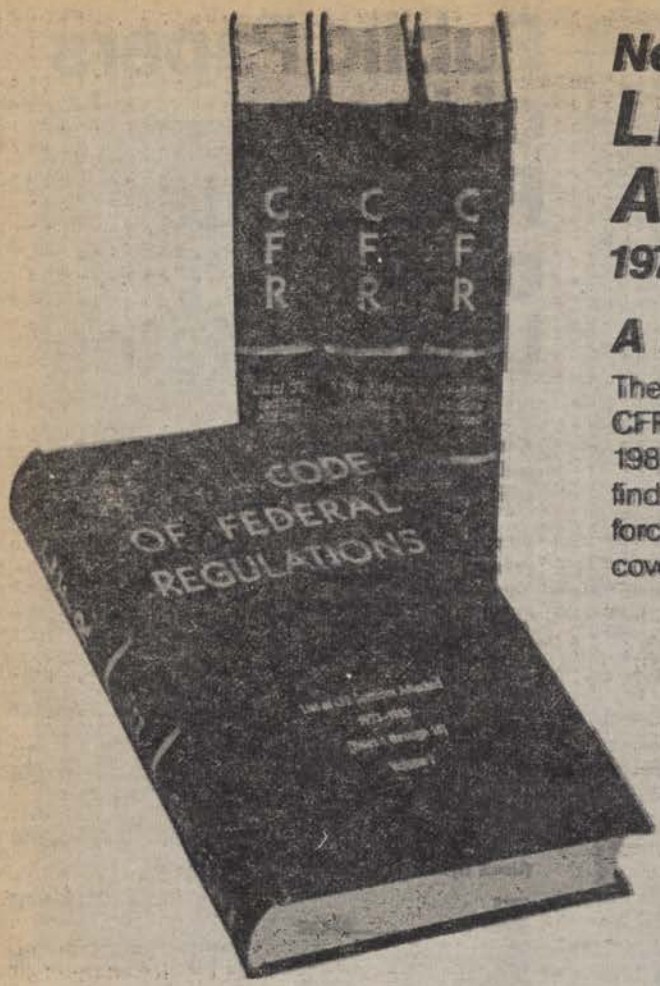

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