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Briefing on How To Use the Federal Register
For information on briefing in Chicago, IL, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

CHICAGO, IL

WHEN: June 9 at 9:00 am
WHERE: Ralph Metcalfe Federal Building
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Proclamation 6691 of May 18, 1994

National Trauma Awareness Month, 1994

By the President of the United States of America

A Proclamation

All of us are potential victims of physical trauma. Even though we may lead relatively calm and safe lives, we can never fully escape the risks of traumatic injury. Each year, no fewer than 150,000 Americans die as a result of massive damage to skin or to internal organs, providing a sobering reminder that we must renew our efforts to create a healthier and safer society.

While traumatic physical injury threatens all of us, young children are at particularly high risk for its tragic effects. In fact, six times as many children are killed by traumatic incidence than by cancer. No matter who falls victim, trauma exacts a tremendous toll.

In addition to the vast physical and emotional suffering that occurs, trauma also causes staggering economic losses. This year alone, Americans will spend more than $175 billion for the health care costs and loss of productivity associated with trauma.

We now consider trauma to be among the most neglected medical conditions in our country, and it is vital that we take steps to diminish its terrible damage.

Fortunately, we can substantially reduce the threat and the impact of traumatic injury through a concerted campaign of prevention and of improvement in care. By using established safety procedures in our homes and at work and by teaching basic safety to our children, we can significantly lower the number of traumatic accidents that occur each year. We can also help prevent many of the fatalities associated with trauma by learning how to properly treat its victims. By rededicating ourselves to understanding life-threatening trauma and by making the most effective uses of emergency medical services, we can all contribute to creating a healthier society.

The Congress, by Public Law 103–39, has designated May 1994 as "National Trauma Awareness Month," and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month of May 1994 as National Trauma Awareness Month. I call upon all Americans to observe this month with appropriate programs, ceremonies, and activities.

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

William J. Clinton

[FR Doc. 94–12649
Filed 5–19–94; 2:10 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 59, No. 98
Monday, May 23, 1994

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 Part 532

RIN 3206–AF62

Prevailing Rate Systems; Definition of Travis and Burnet Counties, TX, to Other NAF Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to abolish the Travis, Texas, Nonappropriated Fund (NAF) Federal Wage System wage area. The Travis NAF wage area is composed of Travis County, Texas (survey area), and Burnet County, Texas (area of application). This regulation redefines Travis County, Texas, to the Bexer, Texas, NAF wage area as an area of application and Burnet County, Texas, to the Bell, Texas, NAF wage area as an area of application. Because of downsizing associated with a scheduled base closure, the Travis NAF wage area did not have the required minimum of 26 NAF wage employees within the survey area, and no local activity within the Travis NAF wage area had the capability to conduct a wage survey.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On August 30, 1993, OPM published an interim rule (58 FR 45413) to abolish the Travis, Texas, NAF wage area and define it to other NAF wage areas for pay-setting purposes. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they 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 recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on August 30, 1993 (58 FR 45413) is adopted as final without any changes.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–12365 Filed 5–20–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Regulations and Standards for Inspection and Certification of Certain Agricultural Commodities and Their Products

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION. Confirmation of regulations.

SUMMARY: The Federal Grain Inspection Service (FGIS) has reviewed subpart A of the part 68 regulations under the Agricultural Marketing Act of 1946, as amended (Act). Pursuant to this review, FGIS has determined that no change will be made to these regulations.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, room 0624 South Building, P.O. Box 96454, Washington, DC, 20090–6454; FAX (202) 720–4628; telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking requesting public comment on subpart A of the part 68 regulations under the Act was published in the **Federal Register** on August 27, 1993, (58 FR 45295).

FGIS solicited data, views, and arguments concerning the need for revising these regulations, the potential for improvement, and language clarity. FGIS also requested comments on several issues identified by interested parties. The objective of this review was to ensure that the regulations continue to serve the needs of the marketplace to the greatest extent possible.

Within the 90-day comment period that ended on November 26, 1993, only one written comment was received. This comment, submitted by the Rice Millers' Association (RMA), asked FGIS to postpone proposing any rulemaking action that would "allow requests for divided-lot certificates to be made for up to 1 year from the outstanding certificate date and, at the discretion of the Service, after the identity of the commodity has been lost" pending further review of the potential impact of much action. FGIS appreciates RMA's concern and will study this issue further. No changes will be proposed at this time.

Based on the information available, FGIS has determined that subpart A of the part 68 regulations under the Act are meeting the needs of the industry and no changes are necessary at this time.

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Dated: May 12, 1994.

David R. Shipman,

Acting Administrator.

[FR Doc. 94–12472 Filed 5–20–94; 8:45 am]

BILLING CODE 3410–EN–M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

Farmers Home Administration

7 CFR Part 1942

RIN 0570–AA08

Rural Business Enterprise Grants and Television Demonstration Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation that is utilized by the Rural

Development Administration (RDA) to make grants to facilitate the development of small and emerging business enterprises in rural areas. A change is needed to implement Title V, Section 516(d) of Public Law 102–552, Farm Credit Banks and Associations Safety and Soundness Act of 1992, which provides that grants may also be made to create, expand, and operate rural distance learning networks and rural learning programs that provide educational or job training instruction related to potential employment or job advancement for adult students. The intended effect is to make this an eligible grant purpose under the Rural Business Enterprise Grant program.

DATES: Interim rule effective May 23, 1994. Written comments must be submitted on or before July 22, 1994.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Barton, Loan Specialist, Community Facilities Division, Rural Development Administration, room 6320, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1490.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this interim final rule in conformance with Executive Order 12866, and the Office of Management and Budget has determined that it is a "significant regulatory action."

Environmental Impact Statement

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

Executive Order 12778

This document regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B, must be exhausted prior to filing suit.

Intergovernmental Review

This action affects the following RDA program as listed in the Catalog of Federal Domestic Assistance under 10.769 Rural Business Enterprise and Television Demonstration Grants and is subject to the provisions of E.O. 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V; 48 FR 29112, June 24, 1983, 49 FR 2267, May 31, 1984, 50 FR 14088, April 10, 1985.)

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0132 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This interim rule does not revise or impose any new information collection requirement from those approved by OMB.

Discussion of the Interim Rule

It is the policy of the Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, the Department is making this action effective immediately upon publication in the **Federal Register** without securing prior public comment. The purpose of this rule is to implement Title V, Section 516(d), of Public Law 102–552, Farm Credit Banks and Association Safety and Soundness Act of 1992, which amends Section 310B(c) (7 U.S.C. 1932(c)) of the Consolidated Farm and Rural Development Act which allows grants for the creation, expansion, and operation of rural distance learning networks or rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancement for adult students. This rule making action does not encompass discretionary decision making by the agency, but merely adds the text of Section 516(d)'s amendment to Section 310B(c) of the Consolidated Farm and Rural Development Act into the regulations governing the Rural Business Enterprise Grant program. That program provides grants to facilitate the development of small and emerging private business enterprises in rural areas. This assistance is expected to further the development of small and emerging private business enterprises in rural areas by making available to developing businesses qualified employees necessary for successful startup or expansion. While the Department is reluctant to short circuit prior public comment, it is certain that failure to implement the program will result in negative impact in rural areas by not fully utilizing the grant program to its fullest authorization for avenues to help facilitate the development of businesses in rural areas. Because the appropriated funds for the program are not available past the end of fiscal year 1994, it is essential that this authorization be implemented this fiscal year.

The rule describing procedures and practices for applying for and obtaining this grant assistance is already in place under the Rural Business Enterprise Grant program. This rule simply adds education and training of adult students as an eligible grant purpose under the program. Requiring prior notice and comment would result in substantial delays in making the use of these grant funds available to the public for education purposes. Public controversy over adding this eligible use of grant funds is unlikely. The Agency, however, is also providing for public comment so that, in the event that members of the public do wish to suggest alternative rule provisions or courses of action in implementing this program, they will have an opportunity to give RDA the benefit of their views in the near future. In the event that public comments are received, the Department will consider them, and issue such amendments to those rules as may be appropriate, as quickly as possible.

List of Subjects in 7 CFR Part 1942

Business and industry, Grant programs—Housing and community development, Industrial parks, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005, 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

2. Section 1942.306 is amended by adding a new paragraph (a) (10) to read as follows:

§ 1942.306 Purposes of grants.

(a) * * *

(10) Create, expand, and operate rural distance learning networks or rural learning programs, that provide educational instruction or job training instruction related to potential employment or job advancement for adult students.

* * * * *

Dated: April 5, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–12471 Filed 5–20–94; 8:45 am]

BILLING CODE 3410–32–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 211, 216, 235, and 242

[INS No. 1429–92]

RIN 1115–AC53

Conditional Permanent Resident Regulations for Alien Entrepreneurs, Spouses, and Children

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements provisions of section 121 of the Immigration Act of 1990, by providing for removal of conditional resident status of certain alien entrepreneurs, their spouses, and children. It sets forth the standards and procedures for the removal of the conditional basis of permanent resident status through the filing of a petition by the alien entrepreneur. This rule will allow alien entrepreneurs to continue their commercial enterprise while providing jobs in the United States.

EFFECTIVE DATE: May 23, 1994.

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SUPPLEMENTARY INFORMATION:

Background

As part of the Immigration Act of 1990, Public Law 101–649, November 29, 1990, Congress created the Employment Creation immigrant visa category under section 203(b)(5) of the Immigration and Nationality Act (Act). Section 203(b)(5) of the Act sets aside immigrant visas for aliens seeking to enter the United States for the purpose of engaging in a new commercial enterprise. To qualify under this immigrant visa category, the alien must invest $1,000,000 (or $500,000 in certain targeted areas) and create at least ten full-time jobs. On November 29, 1991, the Immigration and Naturalization Service (Service) issued a final regulation on implementing the provisions of section 203(b)(5) of the Act.

Under section 121 of the Immigration Act of 1990 (section 216A of the Act), Congress determined that aliens admitted to the United States under the Employment Creation category as alien entrepreneurs and their spouses and children should be admitted as conditional permanent residents as a means to deter immigration-related entrepreneurship fraud. Section 216A of the Act provides for a two-year conditional resident status for alien entrepreneurs and their spouses and unmarried children. It also provides for termination of status if the Service determines that the qualifying commercial enterprise was improper and sets forth the criteria and procedures for the alien entrepeneur to remove conditional resident status.

Termination of Conditional Resident Status

Section 216A(b) of the Act calls for the termination of the alien's conditional permanent resident status during the two-year period if the Service determines that establishment of the commercial enterprise was intended solely as a means to evade United States immigration laws; that the alien did not establish the new commercial enterprise; that the alien did not invest or was not in the process of investing the prescribed capital; that the alien was not sustaining the new commercial enterprise or the investment of capital; or that the alien was not otherwise conforming to the requirements of his or her status. In addition, in light of Congress' intent to prevent further processing of an alien's visa if it becomes known that the alien obtained the money invested through other than legal means, this regulation adds an additional ground to terminate an alien entrepreneur's conditional permanent resident status. Section 216A(b) of the Act provides that if the Service decides to terminate the alien entrepreneur's conditional permanent resident status, the alien shall be notified of such decision and may request a review of the Service's determination in a deportation proceeding. In a deportation proceeding, the Service has the burden of proof to establish by a preponderance of the evidence that one of the reasons for termination is true. Accordingly, 8 CFR 216.3 will be revised to allow for termination of conditional permanent resident status for alien entrepreneurs.

Petition for Removal of Conditions

Section 216A(c)(1) and 216A(d)(2)(A) of the Act require that the alien entrepreneur file a petition for removal of conditions during the 90-day period before the second anniversary of the alien's obtaining conditional permanent resident status. The final regulation provides that the alien entrepreneur file Form I–829, Petition by Entrepreneur to Remove Conditions, with the Service Center having jurisdiction over the location of the alien's commercial enterprise. The petition should include the alien entrepreneur's spouse and children, even if the children marry or reach the age of twenty-one during the period of conditional residence. The final rule also permits the spouse and children of a deceased principal alien entrepreneur to file a petition and have conditions removed, if the spouse and/or children can show that, despite the entrepreneur's death, the requirements for removal of conditions have been met.

Under the final regulation, the Service Center will review the petition for removal of conditions. If the Service Center director determines in his or her discretion that a decision may be made on the basis of the petition and accompanying evidence without the necessity of an interview, the director will render a decision on the petition. If the director determines that an interview is needed, the Service Center director will schedule the alien entrepreneur for an interview at a local Service district office or sub-office having jurisdiction over the alien's commercial enterprise. The district director will then render a decision on the petition.

If the alien entrepreneur fails to file a timely petition for removal of conditions or, without good cause shown, fails to appear for a scheduled personal interview, the alien's status will be terminated and an order to show cause will be issued. The Service's decision may be reviewed in deportation proceedings, but, in all instances, the burden will rest with the alien to show compliance with the filing and interview requirements. The Service may accept and consider a late petition if the alien demonstrates good cause and extenuating circumstances for failing to file a timely petition.

Decision on Petition

Section 216A(d)(1) of the Act provides that each petition shall contain facts and information demonstrating that a commercial enterprise was established by the alien, the alien invested or was actively in the process of investing the requisite capital, and the alien sustained the commercial enterprise and the investment of the required capital during the two years of conditional residence. Under 8 CFR 216.6(a)(4)(iii), the alien entrepreneur will be considered to have "sustained" the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence. This liberal interpretation of the term "sustained" permits the Service maximum flexibility in determining whether the requirements for removal of conditional resident status have been met, as well as following Congress' intent to ensure that "all aliens receiving visas in this section * * * continue their new commercial enterprises so that the creation of U.S. jobs and the infusion of capital into the U.S. economy is sustained." See S. Rep. No. 101–55, 101st Cong., 1st Sess. 22 (1989). The Service recognizes that a bona-fide and good faith investment may not, by the end of the two-year period, meet all the expectations envisioned when the alien entrepreneur obtained conditional resident status. The determination of whether the alien entrepreneur has invested a substantial portion of the requisite capital in good faith will be made on a case-by-case basis. As discussed in the preamble to the proposed rule, in determining whether the alien entrepreneur has demonstrated that he or she invested the requisite capital in good faith, the Service will examine his or her intent based on both objective and subjective standards. See 59 FR 1317–18. The alien entrepreneur has the burden of proof that he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment during the two-year conditional resident period.

On January 10, 1994, at 59 FR 1317–1323, the Service published a proposed rule with request for comments in the **Federal Register**. Interested persons were invited to submit written comments on or before February 9, 1994. The Service received three comments relating to the proposed rule.

Comments

Two commenters criticized the proposed regulation for lacking any time limits for the Service to adjudicate a petition for removal of conditions. One commenter suggested that if the Service takes no action on a petition, the petition should be automatically granted after a set period of time.

Section 216A(c)(3) of the Act provides that the Attorney General make a determination on a petition to remove conditions within 90 days of the date the petition is filed or within 90 days of the interview, whichever is later. Accordingly, 8 CFR 216.6(b)(1) of the proposed regulation states that the Service Center director must either waive the interview requirement and adjudicate the petition or arrange for an interview within 90 days of the date the alien entrepreneur filed the petition. This regulation is, of course, subject to the provisions of 8 CFR 103.2(b)(10)(i). 8 CFR 216.6(c)(1) provides that a decision on a petition shall be made within 90 days of the date of filing or within 90 days of the date of interview, whichever is later. The above provisions in the proposed regulation adequately address the commenters' concerns as well as meet the adjudication time line set forth in section 216A(c)(3) of the Act.

There is no provision in section 216A requiring the Service to approve a petition if the Service fails to adjudicate a petition within 90 days after filing or after an interview. Section 216A(c)(3) of the Act states that the Service must make a determination whether the facts and information described in the contents of the petition are true. Requiring the Service to "automatically" approve a petition after the 90-day period has elapsed would be contrary to the language of section 216A(c)(3) of the Act.

Two of the commenters suggested that the Service list additional types of evidence in 8 CFR 216.6(a)(4)(ii) to show that the alien invested or was actively in the process of investing the requisite capital. This regulation states that such evidence may include, but is not limited to, an audited financial statement. The commenters contended that although an audited financial statement is only a suggested document, it might set too high a standard in the mind of a Service examiner. They suggested other types of evidence such as bank statements or certificates from certified public accountants or officers of the investment entity.

As clearly stated in the regulation, an audited financial statement is only a suggested type of evidence. There is no basis for the contention that mentioning an audited financial statement in the regulation would set too high a standard. The Service recognizes that it is not common practice for all companies to have audited financial statements. The regulation will be amended to include "other probative evidence" indicating establishment of a commercial enterprise. The Service notes that it is possible that the evidence necessary to meet the documentation requirements of 8 CFR 216.6(a)(4)(iii), such as bank statements, would be sufficient to meet the evidence required under 8 CFR 216.6(a)(4)(i) and (ii). Accordingly, 8 CFR 216.6(a)(4)(ii) will be amended to also include "other probative evidence" that a commercial enterprise has been established.

Two of the commenters were concerned that proposed 8 CFR 216.6(a)(4)(iii) requires that the alien entrepreneur make the full capital investment in cash within the two-year conditional residence period. They argued that the wording of the proposed regulation should specifically cover situations where only a portion of the capital in the form of cash has been invested, with the remainder of the capital to be invested by the commercial enterprise. The proposed regulation refers to substantially meeting and maintaining the alien entrepreneur's capital investment. See 8 CFR 216.6(a)(4)(iii). As noted previously in this preamble, the regulation contemplates certain limited circumstances in which the entire amount of the requisite capital has not been invested by the end of the two-year period. Further, the word capital refers not only to a cash investment, but also to other types of investments which meet the definition of capital found in 8 CFR 204.6(e). The proposed regulation is sufficiently flexible to permit situations in which the requisite capital invested is in a form other than cash. For these reasons, the proposed rule, therefore, will not be amended.

One commenter contended that the Service should state in the regulations that a good faith commitment on a debt agreement, which is secured by the alien entrepreneur's assets, should suffice to meet the requirement that the alien entrepreneur has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained the investment. Under the statute, changing the wording of the regulation to include a good faith commitment is not warranted. Section 216A(d)(1) of the Act requires that the alien entrepreneur invested or was actively in the process of investing the requisite capital and

sustained those actions during the two-year conditional residence period. The language of section 216A(d)(1)(B) of the Act uses the past, rather than the present, tense in requesting information showing that the alien entrepreneur invested or was actively in the process of investing the requisite capital. While there is no statutory requirement with respect to when the requisite capital must have been invested during the two-year period, it is clear that, by using the past tense, Congress expressed its intent that substantially all of the requisite capital be invested by the alien entrepreneur before the expiration of conditional resident status. Accordingly, the Service will not adopt the commenter's suggestion.

Two commenters recommended that the divorced spouse of the principal entrepreneur be entitled to have his or her conditional resident status removed. One of those commenters also suggested that children who reach the age of 21 or marry during the conditional residence period should be able to have their conditional resident status removed. Section 216.6(a)(1) of the proposed regulation clearly states that children who marry or reach the age of 21 during the conditional residence period can be included in the principal alien entrepreneur's petition to remove the conditions. The Service has carefully considered the commenters' suggestion that divorced spouses of alien entrepreneurs should also be allowed to remove their conditional residence status. The Service agrees with the commenters that divorced spouses of alien entrepreneurs should be able to remove their conditional resident status as long as the divorce occurred during the conditional residence period. Accordingly, section 216.6(a)(1) of the final regulation will allow divorced spouses of alien entrepreneurs to remove their conditional resident status. The children and the present or former spouse of the alien entrepreneur may be included in the entrepreneur's petition to remove the conditions or they may file a separate petition to remove conditions. They are eligible to have their conditional resident status removed only if the Service removes the alien entrepreneur's conditional resident status.

Two commenters urged the Service to state in the regulations that the legality of the source of the alien entrepreneur's funds should be determined by U.S., rather than foreign standards. The commenters are concerned that aliens would be precluded from applying lawfully acquired funds which were taken out of a country in violation of its export currency laws and placed in a new commercial enterprise in the United States as qualifying capital. The only provision in the proposed regulations concerning source of capital is 8 CFR 216.3(a), which states that the Service shall terminate the alien entrepreneur's status if it becomes known to the government that the alien obtained his or her capital through other legal means (such as through the sale of illegal drugs). When the alien files Form I–526, Immigrant Petition by Alien Entrepreneur, he or she must show that the capital invested was obtained through lawful means. See 8 CFR 204.6(j)(3). The commenters' suggestion is more appropriately addressed to 8 CFR 204.6(j)(2)(ii), which addresses this issue in more detail. The Service notes, however, that without more specific information about the particular country's currency restriction laws, it is difficult to determine whether capital, in a given case, was obtained through other than lawful means. Each petition must be adjudicated on a case-by-case basis. Accordingly, the Service does not feel that it is appropriate to amend this regulation.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is intended to allow alien entrepreneurs to continue their commercial enterprises thereby providing jobs in the United States. This rule merely sets forth the procedures for terminating the conditional resident status of alien entrepreneurs already present in the country and for removing the conditional basis of permanent resident status for such persons. This rule, therefore, will have, at most, an indirect and attenuated effect on such business entities.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5. The OMB control number for the Form I–829 is 1115–0190.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegations (Government agencies), Bonding, Fees, Forms, Freedom of Information, Organization and functions (Government agencies, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 216

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 242

Administrative practice and procedure, Aliens.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by:

a. Removing the "Form I–752" from the listing forms;

b. Revising the description for "Form I–751"; and by

c. Adding the "Form I–829", to the listing of forms, in proper numerical sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–751. For filing petition to remove the conditions on residence which is based on marriage—$75.00.

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Form I–829. For filing petition by entrepreneur to remove conditions—$90.00.

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PART 211—DOCUMENTARY REQUIREMENTS; IMMIGRANTS; WAIVERS

3. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

4. In § 211.1, paragraph (b)(1)(i) introductory text is revised to read as follows:

§ 211.1 Visas.

* * * * *

(b)(1) * * *

(i) *Alien not travelling pursuant to government orders.* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, is returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisions of section 216 or 216A of the Act, whichever is applicable, or within six months of the date of filing a Petition to Remove the Conditions on Residence (Form I–751) or a Petition by Entrepreneur to Remove Conditions (Form I–829) pursuant to 8 CFR part 216, if the alien is in possession of a Service-issued receipt for such filing, and:

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

5. The heading for part 216 is revised as set forth above.

6. The authority citation for part 216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 216.1 [Amended]

7. Section 216.1 is amended in the first sentence by revising the phrase "section 216 of the Act" to read: "section 216 or 216A of the Act, whichever is applicable,".

§ 216.2 [Amended]

8. Section 216.2(b) is amended in the first sentence by adding the phrase "or the alien entrepreneur" between the words "spouse" and "must".

9. Section 216.2(c) is amended by adding the phrase ", or the alien entrepreneur" between the words "spouse" and "of"; and by removing the word "joint".

10. Section 216.3 is revised to read as follows:

§ 216.3 Termination of conditional resident status.

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of the alien's conditional permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or it becomes known to the government that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs). If the Service issues a Notice of Intent to Terminate an alien's conditional resident status, the director shall not adjudicate Form I–751 or Form I–829 until it has been determined that the alien's status shall not be terminated. During this time, the alien shall continue to be a lawful conditional permanent resident with all the rights, privileges, and responsibilities provided to persons possessing such status. Prior to issuing the Notice of Termination, the director shall provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and all of the rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the director, although the alien may request a review of such determination in deportation proceedings. In addition to the notice of termination, the director shall issue an order to show cause why the alien should not be deported from the United States, in accordance with part 242 of this chapter. During the ensuing deportation proceedings, the alien may submit evidence to rebut the determination of the director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs).

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the director determines that an alien spouse obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws or an alien entrepreneur obtained permanent resident status through a commercial enterprise which was improper under section 216A(b)(1) of the Act, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or deportation proceedings under section 242 of the Act.

11. In § 216.4, paragraph (a)(1) is amended by revising the phrase "a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status" in the first sentence, to read: "a Petition to Remove the Conditions on Residence".

12. In § 216.4, the heading is revised and paragraph (a)(1) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 216.4 Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.

(a) * * *

(1) *General procedures.* * * * Upon receipt of a properly filed Form I–751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

* * * * *

13. In § 216.4, paragraph (a)(2) is amended in the last sentence, by revising the phrase "an Application for

Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752)" to read: "a separate Petition to Remove the Conditions on Residence (Form I–751)".

14. In § 216.4, paragraph (a)(6) is amended in the first sentence by removing the phrase "or Form I–752".

15. In § 216.5, the section heading and paragraph (a), introductory text, are revised to read as follows:

§ 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse.

(a) *General.* A conditional resident alien who is unable to meet the requirements under section 216 of the Act for a joint petition for removal of the conditional basis of his or her permanent resident status may file a Petition to Remove the Conditions on Residence (Form I–751), if the alien requests a waiver, was not at fault in failing to meet the filing requirement, and the conditional resident alien is able to establish that:

* * * * *

§ 216.5 [Amended]

16. In § 216.5, paragraphs (b) and (c) are amended by revising the phrase "Form I–752" to read: "Form I–751".

17. A new § 216.6 is added to read as follows:

§ 216.6 Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) *Filing the petition*—(1) *General procedures.* A petition to remove the conditional basis of the permanent resident status of an alien accorded conditional permanent residence pursuant to section 203(b)(5) of the Act must be filed by the alien entrepreneur on Form I–829, Petition by Entrepreneur to Remove Conditions. The alien entrepreneur must file Form I–829 within the 90-day period preceding the second anniversary of his or her admission to the United States as a conditional permanent resident. Before Form I–829 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b)(1) of this chapter, and by documentation as described in paragraph (a)(4) of this section, and it must be properly signed by the alien. Upon receipt of a properly filed Form I–829, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition. The entrepreneur's spouse and children should be included in the petition to remove conditions. Children who have reached the age of twenty-one or who have married during the period of conditional permanent residence and the former spouse of an entrepreneur, who was divorced from the entrepreneur during the period of conditional permanent residence, may be included in the alien entrepreneur's petition or may file a separate petition.

(2) *Jurisdiction.* Form I–829 must be filed with the regional service center having jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States.

(3) *Physical presence at time of filing.* A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and children, if necessary, to comply with the interview requirements contained in the Act. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien complies with the interview requirements described in paragraph (b) of this section. An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

(4) *Documentation.* The petition for removal of conditions must be accompanied by the following evidence:

(i) Evidence that a commercial enterprise was established by the alien. Such evidence may include, but is not limited to, Federal income tax returns;

(ii) Evidence that the alien invested or was actively in the process of investing the requisite capital. Such evidence may include, but is not limited to, an audited financial statement or other probative evidence; and

(iii) Evidence that the alien sustained the actions described in paragraph (a)(4)(i) and (a)(4)(ii) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence. Such evidence may include, but is not limited to, bank statements, invoices, receipts, contracts, business licenses, Federal or State income tax returns, and Federal or State quarterly tax statements.

(iv) Evidence that the alien created or can be expected to create within a reasonable time ten full-time jobs for qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien entrepreneur must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident. Such evidence may include payroll records, relevant tax documents, and Forms I–9.

(5) *Termination of status for failure to file petition.* Failure to properly file Form I–829 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent resident status and the initiation of deportation proceedings. The director shall send a written notice of termination and an order to show cause to an alien entrepreneur who fails to timely file a petition for removal of conditions. No appeal shall lie from this decision; however, the alien may request a review of the determination during deportation proceedings. In deportation proceedings, the burden of proof shall rest with the alien to show by a preponderance of the evidence that he or she complied with the requirement to file the petition within the designated period. The director may deem the petition to have been filed prior to the second anniversary of the alien's obtaining conditional permanent resident status and accept and consider a late petition if the alien demonstrates to the director's satisfaction that failure to file a timely petition was for good cause and due to extenuating circumstances. If the late petition is filed prior to jurisdiction vesting with the immigration judge in deportation proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent resident status, remove the conditional basis of such status, and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the Service.

(6) *Death of entrepreneur and effect on spouse and children.* If an entrepreneur dies during the prescribed two-year period of conditional permanent residence, the spouse and children of the entrepreneur will be eligible for removal of conditions if it can be demonstrated that the conditions

set forth in paragraph (a)(4) of this section have been met.

(b) *Petition review*—(1) *Authority to waive interview.* The director of the service center shall review the Form I–829 and the supporting documents to determine whether to waive the interview required by the Act. If satisfied that the requirements set forth in paragraph (c)(1) of this section have been met, the service center director may waive the interview and approve the petition. If not so satisfied, then the service center director shall forward the petition to the district director having jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States so that an interview of the alien entrepreneur may be conducted. The director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.

(2) *Location of interview.* Unless waived, an interview relating to the Form I–829 shall be conducted by an immigration examiner or other officer so designated by the district director at the district office that has jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States.

(3) *Termination of status for failure to appear for interview.* If the alien fails to appear for an interview in connection with the petition when requested by the Service, the alien's permanent resident status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien will be provided with written notification of the termination and the reasons therefore, and an order to show cause shall be issued placing the alien under deportation proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish by a preponderance of the evidence that he or she complied with the interview requirements. If the alien has failed to appear for a scheduled interview, he or she may submit a written request to the district director asking that the interview be rescheduled or that the interview be waived. That request should explain his or her failure to appear for the scheduled interview, and if a request for waiver of the interview, the reasons such waiver should be granted. If the district director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the district director waives the interview, he or she shall restore the alien's conditional permanent resident status, cancel any outstanding order to show cause in accordance with § 242.7 of this chapter, and proceed to adjudicate the alien's petition. If the district director reschedules that alien's interview, he or she shall restore the alien's conditional permanent resident status, and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the interview is rescheduled at the request of the alien, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) *Adjudication of petition.* (1) The decision on the petition shall be made within 90 days of the date of filing or within 90 days of the interview, whichever is later. In adjudicating the petition, the director shall determine whether:

(i) A commercial enterprise was established by the alien;

(ii) The alien invested or was actively in the process of investing the requisite capital; and

(iii) The alien sustained the actions described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence.

(iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien maintained the number of existing employees at no less than the pre-investment level for the previous two years.

(2) If derogatory information is determined regarding any of these issues or it becomes known to the government that the entrepreneur obtained his or her investment funds through other than legal means (such as through the sale of illegal drugs), the director shall offer the alien entrepreneur the opportunity to rebut such information. If the alien entrepreneur fails to overcome such derogatory information or evidence the investment funds were obtained through other than legal means, the director may deny the petition, terminate the alien's permanent resident status, and issue an order to show cause. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent resident status removed, regardless of any action taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval.* If, after initial review or after the interview, the director approves the petition, he or she will remove the conditional basis of the alien's permanent resident status as of the second anniversary of the alien's entry as a conditional permanent resident. He or she shall provide written notice of the decision to the alien and shall require the alien to report to the appropriate district office for processing for a new Alien Registration Receipt Card, Form I–551, at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial.* If, after initial review or after the interview, the director denies the petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor, and shall issue an order to show cause why the alien should not be deported from the United States. The alien's lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from this decision; however, the alien may seek review of the decision in deportation proceedings. In deportation proceedings, the burden shall rest with the Service to establish by a preponderance of the evidence that the facts and information in the alien's petition for removal of conditions are not true and that the petition was properly denied.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

18. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

19. In § 235.11, paragraphs (a) and (c) are revised to read as follows:

§ 235.11 Admission of conditional permanent residents.

(a) *General*—(1) *Conditional residence based on family relationship.* An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States

citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply.

If so, the alien shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the alien and his or her petitioning spouse must file a Petition to Remove the Conditions on Residence (Form I–751) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(2) *Conditional residence based on entrepreneurship.* An alien seeking admission to the United States with an immigrant visa as an alien entrepreneur (as defined in section 216A(f)(1) of the Act) or the spouse or unmarried minor child of an alien entrepreneur shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the principal alien (entrepreneur) must file a Petition by Entrepreneur to Remove Conditions (Form I–829) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

* * * * *

(c) *Expired conditional permanent resident status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Petition to Remove the Conditions on Residence (Form I–751) or, in the case of an alien entrepreneur (as defined in section 216A(f)(1) of the Act), a Petition by Entrepreneur to Remove Conditions (Form I–829). Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in § 211.1(b)(1) of this chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) or 216A(c) of the Act, whichever is applicable, shall be placed under exclusion proceedings. However, in a case where conditional residence was based on a marriage, exclusion proceedings may be terminated and the alien may be admitted as a returning resident if the required petition (Form I–751) is filed jointly, or by the alien alone (if appropriate), and approved by the Service. In the case of an alien entrepreneur, exclusion proceedings may be terminated and the alien admitted as a returning resident if the required petition (Form I–829) is filed by the alien entrepreneur and approved by the Service.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES, APPREHENSION, CUSTODY, HEARING AND APPEAL

20. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

21. In § 242.17 paragraph (a) is revised to read as follows:

§ 242.17 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966, or under section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of parts 244, 245, and 249 of this chapter. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act) or by an alien entrepreneur (as defined in section 216A(f)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on Residence required by section 216(c) of the Act or the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with part 216 of the chapter. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or she may apply to the immigration judge for such waiver. The immigration judge shall inform the respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes that he or she can do so while safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

* * * * *

Dated: April 21, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–12524 Filed 5–20–94; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Parts 210a, 214, 241, and 242

[INS No. 1438–93; AG Order No. 1879–94]

RIN 1115–AC86

Revision of Grounds for Deportation; Conforming Regulations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule makes technical amendments to conform agency regulations with statutory provisions regarding general classes of deportable aliens. These amendments are necessary due to statutory changes. They will ensure implementation of, and regulatory compliance with, the statutory changes.

EFFECTIVE DATE: May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Robert A. Jacobson, Director, Deportation Branch, Detention and Deportation Division, Immigration and Naturalization Service, 425 I Street NW., room 6008, Washington, DC 20536–0002, telephone (202) 514–2865.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1991, an interim rule with request for comments was published in the **Federal Register** at 56 FR 38331. This rule amended pertinent sections of 8 CFR parts 210a, 214, 241, and 242 to reflect the technical

amendments necessary for conformity with section 241 of the Immigration and Nationality Act (Act), Ch. 477, 66 Stat. 163 (1952), as amended by section 602 of the Immigration Act of 1990 (IMMACT 90), Act of Nov. 29, 1990, Public Law 101–649, 104 Stat. 4978. Section 307(h) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Technical Amendments), Act of Dec. 12, 1991, Public Law 102–232, 105 Stat. 1733, subsequently made minor corrections in section 241 of the Act.

The majority of the amendments made to section 241 of the Act by section 602 of IMMACT 90 were technical in nature, relating in large part to citation changes. Consequently, the majority of changes to 8 CFR parts 210a, 214, 241, and 242 in the interim rule were also technical in nature. Those regulatory changes which did alter substantive rights were so identified in the interim rule. The comment period for the interim rule ended on September 27, 1991. The Service did not receive any comments. Moreover, the Technical Amendments did not substantively change the interim rule. The interim rule is, therefore, adopted as final with minor technical changes.

Regulatory Citation in the Interim Rule

In the supplementary information to the interim rule, 8 CFR 214.2(a)(10) was erroneously referred to as "(s)ection 241.2(a)(10)." Also, 8 CFR 214.2(f)(12(i)(E), referred to in the supplementary information and amended by the interim regulations, has since been redesignated as 8 CFR 214.2(f)(16)(i)(D). Finally, 8 CFR 242.7a was erroneously referred to in the paragraph heading of 8 CFR 242.7a of the interim regulations as "§ 241.7a."

Changes to Title 8, Code of Federal Regulations

The regulations at 8 CFR 242.8(a), as well as at 8 CFR 242.17(d) (in both the paragraph heading and the regulatory text), are amended by substituting "241(a)(1)(E)(iii)" for "241(a)(1)(E)(ii)." These changes are necessary because the Technical Amendments redesignated section 241(a)(1)(E)(ii) of the Act as section 241(a)(1)(E)(iii). Although this amendment is not directly related to the other citation changes in Part 242, 8 CFR 242.20 is amended by substituting "§ 3.39" for "§ 3.37," redesignated by a recent regulatory change.

Table of Citation Changes

A table of citation changes in section 241 of the Act resulting from section 602 of IMMACT 90 was included in the supplementary information to the interim rule. The Technical Amendments have since resulted in the addition of a new section 241(a)(1)(E)(ii), as well as redesignated of the former section 241(a)(1)(E)(ii) as section 241(a)(1)(E)(iii). Further, section 241(a)(21), added by section 544(b)(3) of IMMACT 90, and section 241(a)(3)(C), added by the Technical Amendments, both relate to the same deportation charge. A new table of citation changes is, therefore, included here for informational purposes. Not all current sections of law, however, are, in all respects, identical to the corresponding former sections.

Former citation	New citation (effective 3/1/91)
241(a)(1)	241(a)(1)(A).
241(a)(2)	241(a)(1)(B).
241(a)(3)	Repealed.
241(a)(4)	241(a)(2)(A) (i), (ii), (iii).
241(a)(5)	241(a)((3) (A), (B).
241(a)(6)	Repealed.
241(a)(7)	241(a)(4)(A).
241(a)(8)	241(a)(5).
241(a)(9)(A)	241(a)(1)(C)(i).
241(a)(9)(B)	241(a)(1)(D)(i).
241(a)(10)	Previously repealed.
241(a)(11)	241(a)(2)(B).
241(a)(12)	Repealed.
241(a)(13)	241(a)(1)(E)(i).
241(a)(14)	241(a)(2)(C).
241(a)(15)	Repealed.
241(a)(16)	Repealed.
241(a)(17)	241(a)(2)(D) (i), (ii), (iii).
241(a)(18)	241(a)(2)(D)(iv).
241(a)(19)	241(a)(4)(D).
241(a)(20)	241(a)(1)(F).
241(a)(21)	241(a)(3)(C).
241(b)(1)	241(a)(2)(A)(iv).
241(b)(2), (d)	Repealed.
241(c)(1)	241(a)(1)(G)(i).
241(c)(2)	241(a)(1)(G)(ii).
241(e)	241(b).
241(f)(1)	241(a)(1)(H).
241(f)(2)	Repealed.
241(g)	241(a)(1)(D)(ii).
None	241(a)(1)(C)(ii).
None	241(a)(1)(E)(ii).
None	241(a)(1)(E)(iii).
None	241(a)(4)(B).
None	241(a)(4)(C).
None	241(c).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because the rule merely replaces the obsolete statutory citations with the current ones.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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 rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects

8 CFR Part 210a

Administrative practice and procedure, Aliens, Migrant labor, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 241

Aliens.

8 CFR Part 242

Administrative practice and procedure, Aliens, Apprehension, Crime, Custody, Detention.

Accordingly, the interim rule amending parts 210a, 214, 241, and 242 of chapter I of title 8 of the Code of Federal Regulations, which was published at 56 FR 38331 on August 13, 1991, is adopted as final with the following changes:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

§ 242.8 [Amended]

2. In § 242.8, paragraph (a), the first sentence is amended by revising the reference to section "241(a)(1)(E)(ii)" of the Act to read "241(a)(1)(E)(iii)".

§ 242.17 [Amended]

3. Section 242.17, paragraph (d), is amended by revising the reference to

section "241(a)(1)(E)(ii)" of the Act in both the paragraph heading and in the regulatory text to read "241(a)(1)(E)(iii)".

§ 242.20 [Amended]

4. Section 242.20 is amended by revising the reference to section "3.37" to read "3.39".

Dated: May 11, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–12393 Filed 5–20–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 98

[Docket No. 93–032–2]

Importation of Certain Animal Semen

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to prohibit the importation of animal semen from any country other than the country in which it was collected. This action is intended to prevent the introduction of exotic animal diseases into the United States.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 765B, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4325.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 98 (referred to below as the regulations) govern the importation of animal germ plasm so as to prevent the introduction of contagious diseases of livestock or poultry into the United States. Subparts A and B of part 98 apply to certain animal embryos and subpart C applies to certain animal semen.

On October 25, 1993, we published in the **Federal Register** (58 FR 55026–55027, Docket No. 93–032–1) a proposal to amend the regulations to prohibit the importation of animal semen from any country other than the country in which it was collected. We solicited comments concerning our proposal for a 60-day comment period ending December 27, 1993. During that period, we received three comments, one in support and two opposed. They were from a national veterinary association, a foreign agricultural agency, and a national association of zoological parks and aquariums. The comments opposing the proposal are discussed below.

One commenter argues that this action would unreasonably restrict the trade of animal semen from certain European storage banks which stockpile animal semen collected in various other countries for export to the United States and elsewhere. The comment claims that because these banks are located in countries free of rinderpest, foot and mouth disease (FMD), and other diseases, and because all animal semen imported into the United States from these banks would have been collected in countries similarly free of disease, contaminated semen would only be imported into the United States if the semen were misidentified, commingled with contaminated semen, or otherwise contaminated while at the storage bank. Consequently, as an alternative to our proposal, the commenter suggests that we require veterinary guarantees attesting to the storage conditions of animal semen at regional storage banks after its import from the country of collection and before its export to the United States.

Though veterinary guarantees concerning storage of animal semen after its arrival at a regional bank would help to prevent importation of contaminated animal semen into the United States, such guarantees still would not provide us with the control over semen collection we believe necessary to ensure that contaminated semen is not introduced into the United States. Under the regulations, in order to import animal semen into the United States from countries free of rinderpest and FMD, an importer must supply the U.S. Department of Agriculture (USDA) with information regarding the health and origin of the donor animal and the location, date, and other details regarding the semen collection. When animal semen is imported into the United States from countries other than the country of its collection, the nature and quality of this required information is often deficient or incomplete, and, obtaining additional information can be difficult. We believe that such problems expose the United States to increased risk of animal disease being introduced inadvertently through the import of contaminated semen.

Similarly, the other comment in opposition claims that this action would hinder animal conservation programs which depend on the use of regional storage banks containing animal semen of endangered species, including ruminants, collected in various countries. As an alternative to our proposal, the commenter suggests that we provide for the certification of foreign veterinary services with animal health standards equivalent to our own. After certification, these foreign veterinary services could regulate the export to the United States of animal semen collected in various countries and stored in their countries' regional banks.

Allowing for this sort of certification would not provide us with the control over semen collection we believe necessary to ensure that contaminated semen is not introduced into the United States. We also believe that it would be especially difficult to certify foreign veterinary services as having animal health standards equivalent to our own; varying biological and epidemiological factors in different countries and regions compel some veterinary services to test imported and exported animals for diseases and pests that other veterinary services might not.

Furthermore, there are and will continue to be available alternative conservation methods for endangered animals involving the importation of animal semen. For example, following the effective date of this action, animal semen still may be imported directly into the United States from the country of collection, even from FMD countries, if collected and transported in accordance with the regulations.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

We anticipate that the provisions of this rule will have little or no economic effect. The prohibition against importing animal semen from a country other than the country in which it was collected will not affect significantly the cost of doing business for importers. This rule only requires importers to import animal semen directly from the country in which it was collected; no countries currently allowed to export animal semen under the various regulations will be excluded as a source of animal semen as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has

determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 98

Animal diseases, Imports.

Accordingly, 9 CFR part 98, subpart C, is amended as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

1. The authority citation for part 98 is revised to read as follows:

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. The undesignated paragraph in § 98.31 is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 98.31 General prohibitions; exceptions.

(a) * * *

(b) Animal semen may not be imported into the United States from any country other than the country in which it was collected.

§ 98.34 [Amended]

3. In § 98.34, paragraph (a)(3), the first sentence is amended by removing the phrase "where the shipment has been or will be held or".

Done in Washington, DC, this 18th day of May 1994.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–12528 Filed 5–20–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ASO–10]

Establishment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace areas at military airports in Florida, Georgia, South Carolina, North Carolina, Kentucky and Mississippi. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: *Effective date:* 0901 u.t.c., June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 94–ASO–10, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 5–530–b, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305–5.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Airspace Section, Systems Management Branch, Air Traffic Division, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the DATES section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the regulation or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace areas at military airports in Florida, Georgia, South Carolina, North Carolina, Kentucky and Mississippi. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Homestead AFB, FL, Patrick AFB, FL, Lawson AAF, GA, Dobbins AFB, GA, Moody AFB, GA, Beaufort MCAS, SC, Cherry Point MCAS, NC, Godman AAF, KY and Keesler AFB, MS, when the control towers are closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed.

As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

ASO FL E2 Homestead, FL [New]

Homestead AFB, FL
(lat. 25°29′18″ N, long. 80°23′01″ W)

That airspace, extending upward from the surface within a 5.5-mile radius of Homestead AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 Cocoa Patrick AFB, FL, [New]

Cocoa, Patrick AFB, FL
(lat. 28°14′22″ N, long. 80°36′27″ W)
Melbourne Regional Airport
(lat. 28°06′10″ N, long. 80°38′45″ W)

That airspace extending upward from the surface within a 5.3-mile radius of Patrick AFB; excluding the portion south of a line connecting the two points of intersection within a 4.3-mile radius circle centered on the Melbourne Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E2 Columbus Lawson AAF, GA [New]

Columus, Lawson AAF, GA
(lat. 32°20′17″ N, long. 84°59′32″ W)

That airspace extending upward from the surface within a 4.2-mile radius of Lawson AAF; excluding that airspace within the Columbus Metropolitan Airport, GA, Class C airspace area and within Restricted Area R–3002. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E2 Atlanta Dobbins AFB, GA [New]

Atlanta, Dobbins AFB, GA
(lat. 33°54′55″ N, long. 84°30′59″ W)
Fulton County Airport
(lat. 33°46′45″ N, long. 84°31′17″ W)

That airspace extending upward from the surface within a 5.5-mile radius of Dobbins AFB; excluding the portion south of a line connecting the 2 points of intersection with a 4-mile radius circle centered on Fulton County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E2 Valdosta Moody AFB, GA [New]

Valdosta, Moody AFB, GA
(lat. 30°58′07″ N, long. 83°11′35″ W)

That airspace extending upward from the surface within a 5-mile radius of Moody AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO SC E2 Beaufort, SC [New]

Beaufort MCAS/Merritt Field, SC
(lat. 32°28′39″ N, long. 80°43′23″ W)
Beaufort County Airport
(lat. 32°24′44″ N, long. 80°38′04″ W)

That airspace extending upward from the surface within a 5.6-mile radius of Beaufort MCAS/Merritt field; excluding that airspace within a 1-mile radius of the Beaufort County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO NC E2 Cherry Point MCAS, NC [New]

Cherry Point MCAS, NC
(lat. 34°54′10″ N, long. 76°52′52″ W)

That airspace extending upward from the surface within a 5-mile radius of Cherry Point MCAS. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO KY E2 Fort Knox, KY [New]

Fort Knox, Godman AAF, KY
(lat. 37°54′24″ N, long. 85°58′23″ W)

That airspace extending upward from the surface within a 3.9-mile radius of Godman AAF. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO MS E2 Biloxi, MS [New]

Biloxi, Keesler AFB, MS
(lat. 30°24′41″ N, long. 88°55′25″ W)

That airspace extending upward from the surface within a 4.2-mile radius of Keesler, AFB; excluding that portion west of long. 89°00′00″ W. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on May 16, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–12530 Filed 5–20–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASO–9]

Establishment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace areas at numerous locations in South Carolina, North Carolina, Florida, Georgia, Tennessee and Alabama. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for Instrument Flight Rule (IFR) operations when these control towers are closed.

DATES: *Effective date:* 0901 u.t.c., June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 94-ASO-9, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 5-530-B, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305-5200.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Airspace Section, Systems Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 305-5586.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule.

This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the regulation or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace areas at numerous locations in South Carolina, North Carolina, Florida, Georgia, Tennessee and Alabama. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Florence, SC, Wilmington, NC, Winston-Salem, NC, Jacksonville, Craig Field, FL, Tamiami, FL, Gainesville, FL, Orlando, Executive, FL, Melbourne, FL, St. Petersburg-Clearwater, FL, Atlanta, Fulton County Airport, GA, Albany, GA, Augusta, Bush Field, GA, Montgomery, Dannelly Field, AL, and Mobile, Downtown Airport, AL, when the control towers are closed. The intended effect of this action is to provide adequate Class E Airspace for IFR operations at these airports when these control towers are closed.

As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

ASO SC E2 Florence, SC [New]

Florence Regional Airport, SC
(lat. 34°11'08" N, long. 79°43'26" W)

That airspace extending upward from the surface within a 4.2-mile radius of Florence Regional Airport. this Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO NC E2 Wilmington, NC [New]

Wilmington, New Hanover International Airport, NC
(lat. 34°16'15" N, long. 77°54'09" W)

That airspace extending upward from the surface within a 5-mile radius of New Hanover International Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO NC E2 Winston-Salem, NC [New]

Winston-Salem, Smith Reynolds Airport, NC
(lat. 36°08'01" N, long. 80°13'19" W)

That airspace extending upward from the surface within a 4.2-mile radius of Smith Reynolds Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 Orlando, FL [New]

Orlando, Executive Airport, FL
(lat. 28°32'44" N, long. 81°19'58" W)

That airspace extending upward from the surface within a 4-mile radius of Orlando Executive Airport, FL. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 Jacksonville, FL [New]

Jacksonville, Craig Municipal Airport, FL.
(lat. 30°20′11″ N, long. 81°30′52″ W)

That airspace extending upward from the surface within a 4.2-mile radius of Craig Municipal airport, excluding the portion northeast of a line connecting the 2 points of intersection with a 4.2-mile radius circle centered on Mayport NAS, FL. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 Miami, FL [New]

Miami, Kendall-Tamiami Executive Airport, FL
(lat. 25°38′52″ N, long. 80°25′58″ W)

That airspace extending upward from the surface within a 3.5-mile radius of the Kendall-Tamiami Executive Airport, FL; excluding that airspace within the Miami, FL, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 Gainesville, FL [New]

Gainesville, Regional Airport, FL
(lat. 29°41′24″ N, long. 82°16′18″ W)

That airspace extending upward from the surface within a 3.5-mile radius of Gainesville Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

ASO FL E2 St. Petersburg, FL [New]

St. Petersburg-Clearwater International Airport, FL
(lat. 27°54′39″ N, long. 82°41′14″ W)

That airspace extending upward from the surface within a 4.2-mile radius of St. Petersburg-Clearwater International Airport; excluding that portion within the Tampa International Airport, FL, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 Melbourne, FL [New]

Melbourne Regional Airport, FL
(lat. 28°06′10″ N, long. 80°38′45″ W)

That airspace extending upward from the surface within a 4.3-mile radius of Melbourne Regional Airport; excluding the portion north of a line connecting the 2 points of intersection with a 5.3-mile radius circle centered on Patrick AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E2 Atlanta, GA [New]

Atlanta, Fulton County Airport, GA
(lat. 33°46′45″ N, long. 84°41′17″ W)
Dobbins AFB
(lat. 33°54′54″ N, long. 84°31′00″ W)

That airspace extending upward from the surface within a 4-mile radius of Fulton County Airport; excluding the portion north of a line connecting the 2 points of intersection with a 5.5-mile radius centered on Dobbins AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E2 Albany, GA [New]

Albany, Southwest Georgia Regional Airport, GA
(lat. 31°32′08″ N, long. 84°11′40″ W)

That airspace extending upward from the surface within a 4.2-mile radius of Southwest Georgia Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

ASO GA E2 Augusta, GA [New]

Augusta, Bush Field, GA
(lat. 33°22′12″ N, long. 81°57′52″ W)

That airspace extending upward from the surface within a 4.3-mile radius of Bush Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO AL E2 Montgomery, AL [New]

Montgomery, Dannelly Field, AL
(lat. 32°18′03″ N, long. 86°23′29″ W)

That airspace extending upward from the surface within a 5-mile radius of Dannelly Field Airport; excluding the portion north of a line connecting the 2 points of intersection with a 5-mile radius circle centered on Maxwell AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

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ASO AL E2 Mobile, AL [New]

Mobile Downtown, Airport, AL
(lat. 30°37′36″ N, long. 88°04′05″ W)

That airspace extending upward from the surface within a 4.3-mile radius of Mobile Downtown Airport; excluding the portion within the Bates Field, Mobile, AL, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on May 16, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–12531 Filed 5–20–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 626

Office of the Assistant Secretary for Veterans' Employment and Training

20 CFR Part 1005

Job Training Partnership Act: Veterans' Employment Programs Under Title IV, Part C; Removal of Regulations

AGENCY: The Employment and Training Administration and the Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is removing regulations for Veterans' Employment Programs authorized under title IV, part C, of the Job Training Partnership Act, administered by the Office of the Assistant Secretary for Veterans' Employment and Training. This action is necessitated by the diminishing number of states applying for state formula-allocated monies, and the need to improve the delivery of services. This action allows for the establishment of a more competitive process to increase the effectiveness and efficiency of the program.

EFFECTIVE DATE: May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey C. Crandall at (202) 219–9105 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to title IV, part C, of JTPA, the Secretary of Labor conducts programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service. The programs are administered through the Assistant Secretary of Labor for Veterans' Employment and Training, who conducts the programs through grants, contracts, and cooperative agreements

with public agencies and private non-profit organizations.

The Department of Labor (DOL) originally issued regulations at 20 CFR part 1005 to define specifically the manner in which the funds from this program would be disbursed. See 54 FR 39354 (September 26, 1980); and 48 FR 49198 (October 24, 1983). They provided for formula-based grants to States and required matching funds. However, the number of States applying for title IV–C formula grants has diminished and the Department has determined that a competitive methodology would more efficiently meet the needs of program participants. Program administration will be greatly enhanced as the result of the elimination of those regulations, by increasing competition and lowering administrative costs through larger grant awards. However, while this action removes those regulations, all specifications, special conditions, *etc.*, that were in effect with the award of existing grants are binding until completion of the grant activity, including information collection.

Part 1005 (1993 ed.) identified the process used to provide grant funds to states for Federal training programs for veterans. A Solicitation for Grant Applications (SGA) will be developed and disseminated to eligible applicants for the title IV–C program. The formula-based annual grants process is replaced by a multi-year competitive grants process. This will result in fewer grants of greater dollar value, and will enable recipients of the grants to provide expanded services to eligible veterans. By having larger, competitive grants, services can be targeted to those eligible veterans most in need in areas of high impact, with greater customer satisfaction realized.

It is now possible for JTPA title IV–C programs to be created to better enhance and complement other JTPA programs that do not focus on veterans' services, while continuing efforts to improve the targeting of employment and training services to eligible veterans who face serious barriers to employment. Larger multi-year grants allow for enhancement of the quality of services provided and the outcomes attained by strengthening program activity through increased efficiency in program scope and grant management, improving the linkages between services provided and local labor market needs, and ensuring the provision of a coherent system of outcome-oriented human resource services through changes in the direction and focus of the Veteran's Employment Programs to eligible veterans.

Immediate results will manifest themselves in the form of: eliminated regulations; fewer, but larger grants; establishment of a system of awards through SGA's that can be renewed, modified or changed as deemed necessary. In addition, these SGA's can be drawn to incorporate by reference the essential parts and requirements of the JTPA and the Departmental JTPA regulations. See, *e.g.*, 20 CFR parts 627 and 636; and 29 CFR parts 96–98. For further information regarding the SGA or for copies, please contact Mr. Jeffrey C. Crandall at the number provided above. A copy of the SGA will be published in the **Federal Register** in the immediate future.

This rulemaking supersedes that portion of the rulemaking announced at 56 FR 5124 (February 7, 1991) that related to JTPA title IV–C programs.

Few comments were received in response to the publication of the proposed rule at 59 FR 10769 (March 8, 1994). One commenter expressed total support for the action. Five commenters expressed concern that the action would have an adverse affect upon small states, especially those small states with effective programs and proven track records although they operated with the minimal amount of $55,000 under the formula-based funding process. In response, the competitive process is to be structured to ensure that emphasis will be on the technical merits of the proposal and cost efficiency. Thus, small states with effective programs should not be adversely affected.

One commenter expressed support for efforts to lower the program's administrative costs through larger grant amounts and longer grant periods, but believed that a competitive bidding process is not as effective as an allocation formula in ensuring that the dollars serve the intended clientele. He believed that an allocation component must be kept in place that ensures that the bulk of the funding continues to go to those states in which the majority of veterans needing service reside. In response, as stated above, due to funding limitations, the change from formula-based state allocated funds to a nationwide competition was instituted to maximize service delivery and to target veterans most in need. Other factors such as the technical merit of the proposal and cost efficiency will also be considered.

Publication in Final

For the reasons described above, and in accordance with 5 U.S.C. 553(d)(3), this rule is effective on the publication date of this document. In light of the agency's desire to have an effective and efficient program, and in keeping with mandates of the President to remove unnecessary and restrictive rules, it is in the public interest to eliminate those regulations and establish a new system of grant administration for the title IV–C program. Given the impending start of the program year, it is unnecessary and impracticable to delay the effective date.

Executive Order 12866

This rule is not deemed to be "significant" under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

As Assistant Secretaries of Labor, we certify under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities. We have notified the Small Business Administration of this finding.

Paperwork Reduction Act

As Assistant Secretaries of Labor, we have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any additional information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 20 CFR Part 626

Grant programs—labor, Manpower training programs.

Final Rule

Accordingly, title 20, Code of Federal Regulations, is amended as follows:

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

1. The authority citation for part 626 continues as follows:

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100–418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

§ 626.2 [Amended]

2. Section 626.2 is amended by removing from paragraph (a) the phrase ", with the exception of the veterans' employment program's chapter IX regulations of the Office of the Assistant Secretary for Veterans' Employment and Training, which are set forth at part 1005 of title 20".

§ 626.3 [Amended]

3. Section 626.3 is amended by removing from paragraph (a) the phrase "and part 1005 of chapter IX (Veterans'

employment programs under title IV, part C of the Job Training Partnership Act)".

§ 626.4 [Amended]

4. Section 626.4 is amended:

a. By removing from the introductory text the citation "and 1005"; and

b. By removing from the consolidated table of contents the entry for part 1005 of chapter IX.

CHAPTER IX—OFFICE OF THE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, DEPARTMENT OF LABOR

PART 1005—VETERANS' EMPLOYMENT PROGRAMS UNDER TITLE IV, PART C OF THE JOB TRAINING PARTNERSHIP ACT [REMOVED]

5. Part 1005 of chapter IX is removed.

Signed at Washington, DC, this 16th day of May 1994.

Doug Ross,

Assistant Secretary for Employment and Training.

Preston M. Taylor, Jr.,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 94–12318 Filed 5–20–94; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8541]

RIN 1545–A060

Civil Actions by Persons Other Than Taxpayers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations adding language to the existing regulations regarding civil actions by persons other than taxpayers, to clarify language that is ambiguous or confusing. The final regulations provide that when the IRS levies on property that is in the custody of an agency of the Federal Government, a third party (i.e., someone other than the taxpayer) who is injured by such levy may have a cause of action against the Government for wrongful levy.

EFFECTIVE DATE: These regulations are effective December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7426 of the Internal Revenue Code (Code). On December 23, 1993, a notice of proposed rulemaking relating to civil actions by persons other than taxpayers was published in the **Federal Register** (58 FR 68092). No written comments were received. No public hearing was requested or held. Because no comments were received, the proposed regulations under section 7426 are adopted without revision by this Treasury decision. The preamble to the notice of proposed rulemaking contains the explanation of the provisions of this Treasury decision.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jerome D. Sekula, Office of the Assistant Chief Counsel (General Litigation), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR is amended as follows:

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

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

Par. 2. Section 301.7426–1 is amended as follows:

1. Paragraph (a)(1) is revised to read as set forth below.

2. Paragraph (c) is added to read as set forth below.

§ 301.7426–1 Civil actions by persons other than taxpayers.

(a) *Actions permitted*—(1) *Wrongful levy*—(i) *In general.* If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim—

(A) That such person has an interest in, or lien on, such property which is senior to the interest of the United States; and

(B) That such property was wrongfully levied upon.

(ii) *Debt owed by another Federal agency.* Section 7426 and this paragraph (a) apply when a levy is made by the Internal Revenue Service on a debt owed to a taxpayer by another Federal agency. By contrast, section 7426 and this paragraph (a) do not apply if the Internal Revenue Service requests payment from another Federal agency pursuant to a request for setoff.

* * * * *

(c) *Effective date.* Paragraph (a)(1) of this section is effective as of December 23, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: May 9, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–12464 Filed 5–20–94; 8:45 am]

BILLING CODE 4830–01–U

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations; Unblocking of Certain Bank Transfers Involving Vietnam

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: As an additional step in the normalization of relations with Vietnam, the Treasury Department is amending the Foreign Assets Control Regulations to authorize United States banking institutions to unblock certain funds which came into their possession or control through wire transfer instructions or check remittances received after December 31, 1989, in which Vietnam or a Vietnamese national has or has had an interest.

EFFECTIVE DATE: May 18, 1994.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register.** By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

Effective February 3, 1994, the Office of Foreign Assets Control authorized new transactions involving property in which Vietnam or its nationals have an interest, effectively lifting the embargo against that country for all new transactions. Property blocked at that time, however, remained blocked. The Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), are being amended to add § 500.579, which authorizes banking institutions subject to U.S. jurisdiction to unblock and return to the remitter certain funds that came into their possession or control through wire transfer instructions or check remittances received after December 31, 1989. This general license does not authorize the unblocking of funds in which Vietnam or a Vietnamese national has an interest that were blocked as of February 3, 1994, other than wire transfers and check remittances blocked after December 31, 1989, which are not being returned to the Government of Vietnam or persons in Vietnam. Nor does it affect enforcement actions involving prior violations of the Regulations.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, Banking, Finance, Foreign investments in U.S., Foreign trade, International organizations, North Korea, Penalties, Reporting and recordkeeping requirements, Securities, Services, Telecommunications, Travel restrictions, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as set forth below:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 9193, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 3 CFR 1943–1948 Comp., p. 748.

2. Section 500.579 is added to subpart E to read as follows:

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 500.579 Authorization for release of certain blocked transfers by banking institutions subject to U.S. jurisdiction.

Banking institutions subject to the jurisdiction of the United States are authorized to unblock and return to the remitting party funds that were blocked pursuant to this part because of an interest of Vietnam or a Vietnamese national and that came into their possession or control by wire transfer or check remittance received after December 31, 1989, provided that no funds are released to the Government of Vietnam or any person in Vietnam.

Dated: May 5, 1994.

Steven I. Pinter,

Acting Director, Office of Foreign Assets Control.

Approved: May 9, 1994.

R. Richard Newcomb,

Acting Deputy Assistant Secretary (Law Enforcement).

[FR Doc. 94–12515 Filed 5–18–94; 2:10 pm]

BILLING CODE 4810–25–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 24 and 99

[GN Docket No. 93–252, FCC 94–31]

Implementation of Sections 3(n) and 322 of the Communications Act Regarding Regulatory Treatment of Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This order accelerates the effective date of the redesignation of part 99 of the Commission Rules as part 24. Acceleration of the date is necessary in order to ensure that certain other rule changes adopted by the Commission affecting part 24 take effect after the redesignation of part 99 as part 24.

EFFECTIVE DATE: Effective June 22, 1994. The effective date of July 18, 1994, for the redesignation of part 99 as part 24 published at 59 FR 18493 (April 19, 1994) is changed to June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Kent Nakamura, (202) 418–2042.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in GN Docket No. 93–252, adopted May 18, 1994 and released May 19, 1994. The full text of the Commission's decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopis of Order

This Order accelerates the effective date of earlier Commission action redesignating Part 99 of its Rules as Part 24. This action is necessary in order to ensure that Part 24 is effective prior to the time that the Commission's rules for the auction of certain narrowband Personal Communications Services licenses become effective.

Ordering Clause

IT IS ORDERED that our action in the Second Report and Order in GN Docket No. 93–252 that redesignated part 99 of our Rules as part 24 will become effective June 22, 1994 instead of July 18, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–12618 Filed 5–20–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 59, No. 98
Monday, May 23, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO-370-A5; FV93-930-1]

Reopening of Briefing Period on Proposed Marketing Agreement and Order for Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening period for filing written briefs.

SUMMARY: Notice is hereby given that the time period for filing written briefs on a proposed marketing agreement and order for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin is reopened.

DATES: Written briefs must be received by May 31, 1994.

ADDRESSES: Interested persons are invited to submit written briefs in triplicate to the Hearing Clerk, U.S. Department of Agriculture, room 1079-S, Washington, DC, 20050-9200. All written briefs will be available for public inspection at the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: (1) R. Charles Martin or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, room 2523-S, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone number (202) 720-5053.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon, 97204; telephone: (503) 326-2725.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 23, 1993, and published in the November 30, 1993, issue of the **Federal Register** (58 FR 63108); Notice of Additional Hearings on the Proposed Agreement and Order issued on December 20, 1993, and published in the December 23, 1993, issue of the **Federal Register** (58 FR 68065); and an Amendment to the Notice of Hearing issued on January 25, 1994, and published in the **Federal Register** (59 FR 4259) on January 31, 1994.

Public hearing sessions were held in late 1993 and early 1994 to receive evidence on a proposed marketing agreement and order for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The Notice of Hearing on the proposed marketing agreement and order was issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act." The deadline for filing post-hearing briefs with the Hearing Clerk on the evidence received at the public hearing was April 29, 1994.

The U.S. Department of Agriculture (USDA) has received four requests from interested parties to provide more time for interested persons to analyze the hearing transcripts and prepare and file with the Hearing Clerk their written briefs. These requesters cite hostile weather in their respective growing areas, combined with heavy field activity and the voluminous hearing record as the reasons for requesting a 60-day extension for filing post-hearing briefs to June 30, 1994.

USDA received another request in opposition to any extension of the briefing period. The requester, on behalf of the Cherry Marketing Institute (CMI), stated that opponents to the proposed agreement and order have had adequate time to complete their post-hearing briefs.

Reopening the period in which written briefs may be filed will provide interested persons more time to review the hearing transcripts and submit written briefs thereto. Extending the briefing period by 30-days to May 31, 1994, would provide additional time to Oregon, Washington and other commenters, to fairly address their concerns. A delay of 30 days should not substantially add to the time required to complete this proceeding, in response to the concerns of the CMI. Accordingly, the period in which to file written briefs is reopened until May 31, 1994.

This notice is issued pursuant to the Act and the applicable rules of practice governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Authority: 7 U.S.C. 601-674

Dated: May 16, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94-12577 Filed 5-20-94; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 1040

[Docket No. AO-225-A45-R01; DA-92-10]

Milk in the Southern Michigan Marketing Area; Partial Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This partial decision adopts on an expedited basis a change in the pooling provisions of the Southern Michigan Federal milk order. The change provides that a distributing plant located in the marketing area that processes and distributes primarily aseptically processed fluid milk products would be fully regulated under the order irrespective of the market or markets in which the products may be distributed.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a

substantial number of small entities. The amendment will lessen the regulatory impact of the order on certain milk handlers and will promote orderly marketing of milk by producers and regulated handlers.

The proposed amendment to the rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, the proposed amendment will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Prior documents in this proceeding:

Notice of Hearing: Issued December 3, 1992; published December 10, 1992 (57 FR 58418).

Supplemental Notice of Hearing: Issued January 19, 1993; published January 29, 1993 (58 FR 6447).

Recommended Decision: Issued November 29, 1993; published December 6, 1993 (58 FR 64176).

Notice of Reopened Hearing: Issued February 18, 1994; published February 24, 1994 (59 FR 8874).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Southern Michigan marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), in Grand Rapids, Michigan, on March 1, 1994, pursuant to notice issued February 18, 1994 (59 FR 8874).

Interested parties were given until March 25, 1994, to file post-hearing briefs on proposal No. 3 as published in the hearing notice, and on whether the proposal should be considered on an expedited basis.

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposal on small businesses. However, no participants at the hearing testified about any potentially adverse impacts of the proposal on small businesses.

The material issues on the record of hearing are:

1. Modification of the recommended multiple component pricing decision to compute the same protein price for both handlers and producers on the basis of a cheese market price and a cheese yield formula, and to include any residual value in the skim milk delivered by producers in the computation of the weighted average differential value.

2. Amending the pool supply plant shipping requirement provisions to allow the market administrator to adjust the shipping percentages as market conditions require.

3. Including in the pool distributing plant definition a description of a plant located within the marketing area which processes at least 50 percent of its fluid milk receipts as ultra-high temperature fluid milk products for distribution in aseptic packages. A plant qualifying as a pool distributing plant under the new provision would be a pool plant under the Southern Michigan order regardless of its route disposition in the marketing area of any other Federal milk order.

4. Determining whether an emergency exists to warrant the omission of a recommended decision and the opportunity to file written exceptions thereto with respect to issue No. 3.

This decision deals only with issues 3 and 4. The remaining issues of the original and reopened hearings will be considered in a later decision on this record. Issues 3 and 4 were not considered at the initial February 1993 hearing.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

3. Include in the pool distributing plant definition a description of a plant located within the marketing area which processes at least 50 percent of its fluid milk receipts as ultra-high temperature fluid milk products for distribution in aseptic packages. The provisions of the order that relate to the basis for pooling a fluid milk plant should be modified to include a distributing plant located in the marketing area if the principal activity of the plant is the processing and distribution of aseptically processed fluid milk products. Such pool status, however, should not be dependent upon the amount of route disposition in the Southern Michigan marketing area.

The order currently provides that to qualify as a pool plant during a given month, a distributing plant must have total route disposition of not less than 50 percent of the combined Grade A milk received in bulk at that plant direct from producers, supply plants, cooperative associations, or diverted by the plant operator or cooperative. A distributing plant may also be considered a pool plant in a given month if it qualified as a pool plant under the same performance requirements in either of the immediately preceding two months. A distributing plant which also meets the pooling requirements of another marketing area is regulated under the order in which it has a greater proportion of its route disposition.

Parmalat White Knight Packaging Corporation (White Knight), a proprietary handler, proposed that the order be amended to accommodate the operations of its milk plant located at Wyoming, Michigan. The plant is located within the defined marketing area. A witness for White Knight testified that the plant processes, packages, and distributes fluid milk products that are processed at ultra high temperatures and packaged in aseptic containers. The witness indicated that the aseptic process includes the use of ultra high temperature pasteurization, and that the resulting products, commonly referred to as "UHT" milk, could be stored unrefrigerated.[1] The proprietary handler proposed that this type of plant be a pool plant if it is located in the Southern Michigan marketing area and meets the current performance requirements for a distributing plant, except for the requirement that the plant is regulated where the greatest proportion of its route disposition occurs. The proponent stated that the intent of the proposal is to pool its plant under the Southern Michigan order, irrespective of the level of route sales in this or other markets.

[1] "UHT" milk, however, refers only to the pasteurization process that is used in producing an aseptically processed milk product. For this reason, it is more appropriate for purposes of order provisions to refer to the products involved as aseptically processed fluid milk products rather than UHT milk. To simplify the presentation of the findings and conclusions, however, and because of the common usage of the term "UHT", reference is made in the decision to UHT milk or milk products and UHT plant.

The White Knight spokesman cited several reasons why the proposal should be adopted. One reason cited was the nature of UHT milk products. According to the witness, fluid milk products processed at ultra high temperatures and packaged in aseptic containers can be stored at room temperature for nine months, in contrast to typical fluid milk products, which must be refrigerated and have relatively short shelf lives. As a result, when compared to the regularly-scheduled and relatively local distribution of fluid milk products, White Knight has the ability to distribute its products at more infrequent intervals and over a much broader geographical territory. White Knight's milk supply is procured from two cooperatives which represent 80 percent of producer milk in the order. Because of the typical procurement but unique distribution patterns, the proponent asserted, the current pooling provisions create a disincentive against local producers supplying a local Class I plant.

The nature of the proponent's dairy products has led to chaotic marketing conditions, the witness stated. Due to the distribution and sales patterns of its aseptically-packaged products, the regulatory status of the UHT plant has shifted from order to order, even on a monthly basis. The witness noted that in the five months beginning in September 1993, the plant was pooled under four different federal orders: Carolina, New Orleans-Mississippi, Southeastern Florida, and Tampa Bay. In a recent month, proponent's products were sold in 17 federal order marketing areas, in addition to unregulated territory. Almost half of the proponent's sales were in unregulated areas.

The witness stated that continual change in regulation under different federal orders puts the proponent at a competitive disadvantage to handlers who know with certainty under which order they will be regulated, because advance knowledge of the Class I price virtually is eliminated for the proponent. This has made it difficult for the proponent to price and sell its products because its costs are not known in advance.

The witness noted that the administrative costs of tracking distribution and sales patterns are greater with the regulatory shifts. Additional administrative effort and time on the part of the market administrator, the proprietary handler, and the cooperative supplier is necessary to obtain information detailing where the milk originates and where the product is sold to consumers. Because of the numerous areas in which the handler markets products, the witness testified, it is more difficult for the handler to properly report its sales of UHT milk on a monthly basis. Payroll information requirements are duplicated in both the originating and the pooling orders and are necessary for all producers' milk that is shipped to the plant during the month. Because the producers whose milk is shipped to the proponent's plant may vary during the month, more administrative work is created. The variation of reports required under different orders also requires additional time each month. The process would be simplified for the market administrator, handler, and cooperative if regulation were maintained under only one order.

Moreover, some markets under which the proponent's plant has been pooled have base-excess plans, such as the Carolina order. According to proponent's post-hearing brief, because the group of producers whose milk is supplied to the proponent changes somewhat each month, little or no base would be accumulated, even under continuous regulation, in a market that uses a base-excess plan. Hence, producers supplying the predominantly Class I White Knight plant would be penalized by receiving the excess or Class III price. The brief continues by noting that failure to earn base creates a disincentive for producers to supply a Class I plant, which is not the intent of the base-excess provisions or the Federal Order program.

In proponent's view, failure to adopt its lock-in proposal on an expedited basis would cause continuation of disruptive market conditions, operational problems for the UHT plant, administrative problems for the various orders, competitive uncertainty for the proponent, and payment problems for producers.

A witness representing Independent Cooperative Milk Producers Association (ICMPA) and Michigan Milk Producers Association (MMPA) also testified in support of proposals 3 and 4. The entire milk supply for the White Knight plant is obtained from ICMPA and MMPA. The witness concurred with the proponent's testimony. He stated that continuing to sell milk to the plant puts producers whose milk is shipped to White Knight in an inequitable situation with other order producers, and that various Class I differentials adjusted for location are disruptive to the order. Some milk destined for White Knight has been reloaded at a plant located within the marketing area to insure that it will be pooled under the order. The witness testified that reloading is not practical and results in increased costs for the supplying cooperative and White Knight.

The supplying cooperatives' witness also raised concerns about base-excess possibilities. The witness stated that by shipping the milk to White Knight, the cooperative is accepting the price that will be received for it. ICMPA, he testified, does not want to supply a handler and receive less value for the milk than would have been received if the milk were sold for utilization within the market area. The witness also testified that the potential of being pooled under a base-excess order, in months when milk in excess of an established base is assigned a lower value, could cause the supplying cooperative to deny shipments of milk to the distributing plant.

No opposition to the proposal was expressed at the hearing or in briefs.

The record evidence indicates that fluid milk products have been processed at the proponent's plant since September 1993; currently, UHT pasteurization and aseptic packaging are used in the manufacturing of all dairy products. Most of the plant's milk utilization is classified as Class I, and a small amount of the milk is classified as Class III. White Knight purchases milk from two cooperatives which represent approximately 80 percent of producer milk in the order.

The proponent's distribution channels for UHT fluid milk are substantially different from those used to distribute fluid milk products that require refrigeration. These latter products generally are distributed through frequent deliveries by distributing plants to stores within the marketing area. According to record evidence, the proponent's products are distributed as far away as the Caribbean and in a substantial number of federal order areas each month.

Under current provisions, a distributing fluid milk plant that qualifies for pooling under more than one order during the same month is regulated under the order in which such plant's route distribution is the greatest. Such a provision normally assures that all handlers having their principal sales in a market are subject to the same pricing and other regulatory requirements. However, because of its products' distribution patterns, the proponent's UHT plant has yet to be regulated under any one particular order on a regular basis. The problems that have occurred from such pooling uncertainties are severe enough to override the traditional basis for pooling a distributing plant.

Shifting regulatory status of the proponent's plant between orders

creates uncertainty, which is not conducive to maintaining market stability in the Southern Michigan market, and may affect other markets adversely, as well. For example, the Class I differential at the Wyoming location, $1.70 under the Southern Michigan order, ranges for the four orders under which the plant has been regulated from $1.175 under the New Orleans-Mississippi order to $1.54 under the Southeastern Florida order, a range of 36.5 cents per hundredweight. Such price changes create serious marketing problems to the proponent in determining what price to place on the various UHT products. The supplying cooperatives also experience difficulty in pricing milk to White Knight due to the broad geographic area of the plant's product distribution, and uncertainty about the level and the basis of returns they receive for their milk if the regulatory status of the plant is unstable.

Prices received by producers under an order are influenced by the amount of the Class I differential, the market utilization of milk, the applicable location adjustments, and method of payment. Since these factors vary from order to order, producer prices at the White Knight UHT plant vary considerably when the plant shifts regulation from one order to another on the basis of sales shifts. Under these disorderly circumstances, producers would find it disruptive to their operations and long-range planning to shift from one market to another. When regulated by one order, pay prices for producers supplying the proponent's plant would be the same as for other producers shipping to plants in the same zone. In addition, producers whose milk is pooled regularly under the various orders under which White Knight may become regulated may find their pay prices fluctuating and disrupted.

The record evidence indicates that both the proponent and its milk suppliers are concerned with the possibility that the plant might be regulated under an order with a base-excess plan during months in which milk in excess of an established base is assigned a lower value. Without an established milk production base, the milk would be priced at the excess price.[2] White Knight would be unable to attract an adequate supply of milk if it were known that the milk would be excess milk in a marketing area with a base-excess plan. Therefore, the continued milk supply for the UHT plant is threatened unless current order provisions are amended. Under the circumstances described in the record, consideration must be given to regulating the plant in the market in which there is reasonable assurance that it will have available an adequate supply of producer milk.

It is concluded that overall market stability will tend to be maintained and the regulatory stability of the White Knight UHT plant (or any other such plant) will tend to be assured if the order is modified along the lines proposed. The order will specify that the principal activity at such a plant must be the processing and distribution of aseptically processed fluid milk products. Such a requirement is intended to assure that a plant would not be able to be pooled under the particular pooling provision at issue unless at least one-half of the plant's fluid milk receipts are processed and distributed in the form of aseptically processed fluid milk products. Thus, the plant would have some operating flexibility.

Under the lock-in provision adopted herein, the Southern Michigan order would regulate the Wyoming UHT plant (or any other similar plant) even though it had a greater proportion of its route distribution in the marketing area of another order. The intent of this pooling arrangement may be in conflict with the pooling requirements of another order since the other order may not have a complementary provision which will permit the plant to be locked in under the Southern Michigan order. It is not possible to eliminate pooling conflicts between the provisions of the Southern Michigan order and other orders by amending only the Southern Michigan order. Thus, whenever such a pooling conflict arises, an administrative decision as to the order under which the plant shall be pooled may be necessary, depending upon the particular provisions of each order and the intent of maintaining Southern Michigan regulation for a UHT plant located within the marketing area.

4. Emergency Action. The omission of a recommended decision was proposed by proponent of the lock-in proposal that was discussed above as issue 3. The witness representing the supplying cooperatives also stated support for an emergency decision. No testimony was received in opposition to emergency action. The testimony and data in the record of this proceeding strongly indicate the need for prompt amendatory action. The evidence shows it is desirable to have an amended order effective as soon as possible to minimize the disorderly marketing conditions currently facing the UHT plant. The normal procedure of issuing a recommended decision and providing time to file exceptions thereto would further the disorderly market conditions that the UHT plant is facing.

It is therefore found that due and timely execution of the Secretary's function in this proceeding imperatively and unavoidably requires omission of the recommended decision and the opportunity for filing exceptions thereto.

Rulings on Proposed Findings and Conclusions

A brief and proposed findings and conclusions were filed on behalf of White Knight. The brief, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. No opposition to either the lock-in proposal or to emergency consideration was received in testimony or in proposed findings and conclusions.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Michigan order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

[2] Currently, 7 of 39 orders have this plan; months in which excess milk is assigned a lower value than base milk range from February through August depending on the order.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Southern Michigan marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

January 1994 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Southern Michigan marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1040

Milk marketing orders.

Dated: May 12, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Southern Michigan Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it has been amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Southern Michigan marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The authority citation for 7 CFR part 1040 continues to read as follows:

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

§ 1040.5 [Amended]

2. Section 1040.5 is amended by removing the phrase "in the marketing area" at the end of the section.

3. Section 1040.7 is amended by revising the introductory text of the section, paragraph (a), and the first sentence of the introductory text of paragraph (b), to read as follows:

§ 1040.7 Pool plant.

Pool plant means:

(a) A distributing plant:

(1) From which total route disposition, except filled milk, during the month is not less than 50 percent of the combined Grade A milk received in bulk at such plant direct from producers, from supply plants, from a cooperative association as described in § 1040.9(c) or diverted by the plant operator or by a cooperative association pursuant to § 1040.13 as producer milk, except as provided in paragraph (c) of this section; or

(2) That qualified as a pool plant in either of the immediately preceding 2 months on the basis of performance standards described in paragraph (a)(1) of this section, except as provided in paragraph (c) of this section; or

(3) That meets the following conditions, regardless of the provisions of paragraph (c) of this section:

(i) The plant is located in the marketing area;

(ii) The plant has total route disposition, except filled milk, during the month of not less than 50 percent of the combined Grade A milk received in bulk at such plant direct from producers, from supply plants, from a cooperative association as described in § 1040.9(c) or diverted by the plant operator or by a cooperative association pursuant to § 1040.13 as producer milk; and

(iii) The principal activity of such plant is the processing and distributing of aseptically processed fluid milk products.

(b) Except as provided in paragraph (c) of this section, a supply plant which during the month meets one of the performance requirements specified in paragraph (b) (1), (2), (3) or (4) of this section. * * *

* * * * *

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____ [1] to _____, all inclusive, of the order regulating the handling of milk in the (_____ Name of order _____) marketing area (7 CFR _____ PART _____ [2]) which is annexed hereto; and

II. The following provisions: § _____ [3] Record of milk handled and authorization to correct typographical errors.

[1] First and last sections of order.

[2] Appropriate part number.

[3] Next consecutive section number.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____[4], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____[3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature
By (Name) _____
(Title) _____
(Address) _____
(Seal)
Attest

[FR Doc. 94–12274 Filed 5–20–94; 8:45 am]

BILLING CODE 3410–02–P

[4] Appropriate representative period for the order.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

[Docket No. PRM–71–11]

Department of Energy, Receipt of a Petition for Rulemaking: Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Extension of comment period.

SUMMARY: On February 18, 1994 (59 FR 8143), the Nuclear Regulatory Commission (NRC) published for public comment a petition for rulemaking filed by the U.S. Department of Energy. The petitioner requested that the NRC amend its regulations governing packaging and transportation of radioactive materials to specifically exempt canisters containing vitrified high-level waste from the double containment requirement specified in NRC's regulations. The comment period for this petition for rulemaking was to have expired on May 4, 1994. The INEL Oversight Program of the State of Idaho has requested a thirty-day extension of the comment period. In view of the fact that the State of Idaho has received technical background documents regarding the proposed amendment only recently from the U.S. Department of Energy and requests this extension to review these documents and provide comments, the NRC has decided to extend the comment period for an additional thirty days. The extended comment period now expires on June 3, 1994.

DATES: The comment period has been extended and now expires June 3, 1994. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Rules Review Section; Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–492–7758 or Toll Free: 800–368–5642.

Dated at Rockville, Maryland, this 17th day of May 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–12505 Filed 5–20–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL–520–87]

RIN 1545–AL20

Payment of Excess Expenses Incurred by Purchaser in Connection With the Redemption of Real Property Under I.R.C. § 7425

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains a proposed regulatory amendment relating to the payment of excess expenses incurred by a purchaser at a nonjudicial sale in connection with redemptions of real property by the United States under Internal Revenue Code section 7425. The existing regulations provide guidelines for submitting claims for excess expenses incurred by a purchaser, or his or her successor in interest, after a foreclosure sale and before redemption, but do not provide a cutoff date for submission of claims for excess expenses. The intent of the proposed regulations is to provide such a cutoff date. These proposed regulations provide that when requested by the district director, a purchaser at a nonjudicial foreclosure sale must submit a written claim for excess expenses within 30 days of the request for such claim to be considered. If, however, the purchaser does not submit a claim at that time, but does incur excess expenses, the purchaser may submit a claim within 30 days after the redemption. Failure to submit a claim within that time period forecloses the right to do so.

DATES: Written comments and requests for a public hearing must be received by July 22, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (GL–520–87), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (GL–520–87), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FURTHER INFORMATION CONTACT: Robert A. Walker, (202) 622- 3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that would amend the Income Tax Regulations (26 CFR part 301) under section 7425 of the Internal Revenue Code (Code). The regulations would impose a time limit within which a purchaser of real property at a nonjudicial sale may submit a claim for excess expenses to the United States when it is redeeming such real property. The United States will not consider any claim made after expiration of the time limits.

Explanation of Provisions

Treasury Regulation § 301.7425–4(b)(3)(ii) does not provide a specific time period within which the purchaser

at a nonjudicial foreclosure sale may submit a claim for excess expenses after the redemption. The proposed regulations clarify that claims for excess expenses must be submitted within the time periods specified in the regulations in order for the purchaser to be reimbursed.

The proposed regulations establish a 30-day limit after a request is made by the district director for the purchaser at a nonjudicial sale or his or her successor in interest to furnish a written itemized statement of expenses in excess of income. Since excess expenses could be incurred after a district director's request, a purchaser who fails to submit a claim at this time may submit a claim within 30 days after the date of redemption. These limits will allow the purchaser a reasonable amount of time within which to determine the amount of any excess expenses and to submit a claim to the United States. After the expiration of the relevant time periods, the United States may distribute all surplus proceeds associated with the sale of the redeemed property unhindered by any possibility of a claim for excess expenses made in the future when the surplus proceeds of sale are no longer available to satisfy such a claim. Adding time limits will also expedite the handling of redemption sales by earlier disposition of surplus proceeds of sale. Disputes concerning properly submitted claims will still be resolved by the United States within a reasonable time after the redemption period. The Service solicits comments as to whether the 30-day period after the date of redemption for a purchaser to submit an itemized statement of excess expenses or to submit additional excess expenses is adequate.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Robert A. Walker, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.7425–4(b)(3)(ii) is amended by revising the third sentence and adding a fourth sentence to read as follows:

§ 301.7425–4 Discharge of liens; redemption by United States.

* * * * *

(b) * * *

(3) * * *

(ii) * * * If a purchaser or his or her successor in interest has failed to furnish the written itemized statement within 30 days after the request therefor is made by the district director, or there is a disagreement as to the amount properly payable under paragraph (b)(1)(iii) of this section, or if there were additional excess expenses that were not claimed in the original itemized statement, the purchaser or his or her successor in interest may submit a written itemized statement to the district director within 30 days after the date of redemption. If the purchaser or his or her successor in interest fails to timely submit such a written itemized statement, no amount shall be payable for expenses in excess of income.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–12465 Filed 5–20–94; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR PART 111

Presort Accuracy Validation and Evaluation (PAVE)

AGENCY: Postal Service.

ACTION: Notice of proposed program.

SUMMARY: The U.S. Postal Service (USPS) published proposed requirements for a Vendor Presort Software Validation Program in the **Federal Register** on April 14, 1992 (57 FR 12893–12901). After receiving written comments in response to the proposal, the Postal Service decided to provide additional opportunity for comment. To facilitate the receipt of additional comments, a public meeting was announced in the **Federal Register** on July 21, 1992 (57 FR 32188), and held on August 5, 1992, at the USPS National Customer Support Center. As a result of comments received, a withdrawal of the proposed rule was subsequently published in the **Federal Register** on September 11, 1992 (57 FR 41716), in order to publish the following new proposed rule for a Postal Service testing and certification program of presort software that it intends to name Presort Accuracy Validation and Evaluation (PAVE).

PAVE, if adopted, would be a voluntary program in which the Postal Service would, upon request, provide testing for certain categories of presort software and hardware products to determine their accuracy in sorting address information according to the mailing standards of the Domestic Mail Manual (DMM). This program would assure those using presort software packages that a PAVE-certified product, if used properly, would have the capability of performing its intended function according to the current mailing standards of the Postal Service.

Because make-up errors in mail preparation cannot be eliminated via software alone, the use of a PAVE-certified presort product to produce a mailing would not assure rate eligibility As part of this program, manufacturers of certified presort software would need to inform users of their products that proper use of presort software (e.g.,

selecting appropriate options for a given sortation, using the correct parameter settings, etc.) would remain critical to ensuring accurate sortation.

The Postal Service is seeking comments from interested parties, including developers and users of presort products, to ensure the most effective design and implementation of this proposed program.

DATES: Comments must be received on or before June 15, 1994.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Mail Acceptance, 475 L'Enfant Plaza SW., room 8430, Washington, DC 20260–6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday at the above address.

FOR FURTHER INFORMATION CONTACT: George T. Hurst, (202) 268–5232, or Lynn Martin (202) 268–5176.

SUPPLEMENTARY INFORMATION: Many mailers rely on computer software to generate mailings for postage discounts. Two areas where computer software has proved particularly advantageous in mail production are the matching and coding of individual address records and the presorting of address lists. To validate the accuracy of address matching software, the Postal Service has established the Coding Accuracy Support System (CASS), which provides a common platform to measure the quality of this software. The Postal Service proposes, with this notice, the implementation of a similar program to validate the accuracy of presort software products in specific presort categories. This program would be voluntary and available to all developers of presort products that sort address information according to the presort standards of the DMM. It would be available to test products configured for personal, mid-range, or main frame computers including mail-sorting optical character readers. The Postal Service does not propose that the use of PAVE certified software be mandatory for obtaining presort postage discounts.

For purposes of PAVE certification, eligible presort product developers are defined as those firms that initially develop a presort product, regardless of commercial availability. This definition also includes those that make modifications that alter the sorting logic, documentation generation capability, or add to or revise the original parameters of a software product.

A presort product is defined as a complete set of computer program modules or equipment that presorts address lists or mailpieces according to DMM standards for one or more types of mailings.

Program Overview

Developers of presort software and/or hardware would apply for PAVE certification of their products. On receipt of the application, the Postal Service would forward the appropriate test file of address records to the developer. The developer would sort the file with its presort product and print documentation supporting accurate sortation and rate application (along with other documentation printed by the software). This information, along with the original media, would be returned for evaluation to the USPS National Customer Support Center (NCSC) within a specified time frame.

The Postal Service would then evaluate the documentation for presort accuracy. In addition, the Postal Service would evaluate the accuracy, format, and content of; required postal documentation (where applicable), facsimile mailing statements (if generated), and any other postal forms generated by the software product in the category being tested.

If the Postal Service determines that the presort product satisfies the current presort standards, the developer would be issued a PAVE certificate for that product in that category. The certification would be good for 1 year, or until the next PAVE cycle. PAVE testing would be conducted from August through December, as detailed further in this notice. A list of PAVE-certified software/hardware developers would then be published in the *Postal Bulletin* (or a similar publication/listing as is currently used for CASS/MASS certified vendors).

Selecting Specific Presort Categories

The Postal Service would not be able to test individually all presort categories every year. The Postal Service would choose a limited number of presort categories annually for PAVE testing. Presort product developers would be notified of the new test categories as well as any changes made to previous tests to be evaluated in the next PAVE cycle approximately 3 months in advance of actual testing, so that developers could prepare for and order the appropriate test files.

Presort categories would be chosen based on, but not limited to, the following criteria:

- Presort categories most often used by different mailers (to ensure testing of the most commonly used products).
- Presort categories where significant mail preparation error is being detected by the Postal Service.
- Presort categories that are relatively new.

For the first PAVE test cycle, the Postal Service proposes the following domestic presort categories:

- Presorted First-Class.
- First-/third-class barcoded letter-size:

—Tray-based.
—2-Tier package-based.
—3-Tier package-based.

- Second-class presort (carrier route, 3/5 digit, and basic).
- Third-class presort (3/5 digit and basic).
- Third-class carrier route presort.

A presort product developer requesting one or more of the files for PAVE testing would also receive a technical guide that details specifications for each test category. These specifications would include such information as:

- Mailpiece specifications (mailpiece thickness, weight, length, and height).
- Mail processing category.
- Maximum pieces to a tray (if applicable).
- Minimum pieces to a tray (if 3/4 full tray is a pertinent criteria).
- Mail entry point.
- Sortation levels allowed (if applicable).
- Overflow trays (if allowed).
- Total number of records (addresses) contained in the file.

OCR Testing

As detailed later, all the test files would be provided to requesting presort product developers in electronic media (magnetic tape, cartridge, and diskette). However, for optical character reader (OCR) applicants, the Postal Service would provide the First-/third-class barcoded letter-size test(s) as a physical test deck of actual mailpieces. The Postal Service proposes that the physical test deck, rather than an electronic file, would better accommodate the actual sortation process of an optical character reader.

This physical test deck would be similar to that used in MLOCR Accuracy Support System (MASS) testing, consisting of several thousand sample mailpieces that would be sent to the applicant's location for OCR presorting. The entire test deck would be presorted as would a regular mailing in that particular category, trayed, labeled, and documented, and then returned to the Postal Service for PAVE evaluation.

Similar to other PAVE participants, eligible OCR participants would consist of those manufacturers that initially developed the presort software product used in the OCR, regardless of

commercial availability, or those that made modifications that alter the sorting logic, documentation generation capability, or add to or revise the software's original parameters.

Test Cycle and Frequency

The Postal Service proposes the following PAVE test cycle for 1994:

1. Submitting Applications (August 1–31)

Software developers would complete and forward order forms for a specific test file(s) to the Postal Service for receipt no later than August 31.

2. Distributing of Test Files (September 1–30)

NCSC would mail the test file(s) to requesters during this period.

3. Returning Test Files (September 1–October 15)

Presort product developers would process the test file through the presort product being tested and return the sorted file, along with hard copy documentation supporting accurate sortation and rate application, for receipt by NCSC no later than October 15.

4. Evaluating and Responding (November 15–December 15)

The Postal Service would examine the hard copy documentation for accuracy and provide evaluation results to the presort product developer no later than December 15.

5. Retesting (November 15–December 31)

Developers would have this period to request, process, and be reevaluated on those test(s) that they had failed in the initial test cycle.

6. Publishing PAVE-Certified Developers (January, 1995)

A list of PAVE-certified presort product developers, product names, version numbers, and presort categories would be published in the Postal Bulletin (or a similar publication/listing as is currently used for CASS/MASS certified vendors).

Note: Although the Postal Service proposes the above PAVE cycle to establish reasonable time frames and cut-off dates for each process, steps 2 through 5 would be expedited where possible.

Application Process

To apply for PAVE certification, eligible presort product developers would complete the order form shown as Exhibit A of this notice. Only one form would be necessary regardless of the number of presort categories being applied for. The completed form would be sent to the following address: Pave Certification Program, National Customer Support Center, United States Postal Service, 6060 Primacy Pky Ste 101, Memphis, TN 38188–0001.

PAVE Test Files

PAVE test files would vary in record quantity and ZIP Code variety depending on the presort category being tested. However, all the address records in the files would consist of randomly selected primary street records appropriate for the ZIP Code, ZIP+4 code range, or delivery point code numerics used (the correction character numerics would not be included). This use of error-free addresses would eliminate problems arising from presort products that incorporate some address verification mechanisms prior to sortation.

The test files would be configured in the following media:

• Magnetic Tape:

—6250 BPI EBCDIC.
—6250 BPI ASCII.
—1600 BPI EBCDIC.
—1600 BPI ASCII.

• Cartridge:

—IBM 3480 38K.

• Diskette:

—3–½", 1.44 Megabyte MS-DOS.
—5–¼", 1.2 Megabyte MS-DOS.

• Physical Test Deck (for OCR software/hardware developers only)

—Standard #10 white window envelopes (4–⅛" x 9–½") made of 24 pound basis weight paper stock with inserts preprinted with OCR-readable addresses and POSTNET barcodes.

Processing Test Files and Providing Documentation

Once received, the developer would sort the test file(s) at its location with its presort product according to the presort category being examined. The developer would generate hard copy documentation to support the accurate sortation and rate application of the addresses on the test file. This would include such information as the following:

• Documentation required to accompany the mailing statement (if applicable).

• Tray/package audit trails.

• Tray, sack, label generation (samples of each type).

• Summary reports.

• Parameter reports (parameters used to run the test file).

In addition, the developer would generate (as an output of this test run) and submit for PAVE evaluation other forms of documentation available to users of the product, such as:

• Mailing statement facsimiles (if mailing statement facsimiles are not generated by the software product, the manufacturer would have to provide rate qualification totals for PAVE certification).

• Other postal forms facsimiles.

At previous commenters' requests, the Postal Service considered the possibility of having developers send their products to the Postal Service for PAVE testing rather than providing test files to be processed at developers' locations. After initial review, this was felt to be inefficient or inappropriate for the following reasons:

• Various operating platforms/systems might not be available for the Postal Service to run all the products.

• Postal Service examiners would likely require in-depth training on many products in order to evaluate their capabilities properly.

• Tests might become too subjective given examiner's varying knowledge of different products.

• Security and liability issues might arise given the receipt and usage of presort software programs not otherwise available to the general public or in advance of their commercial release.

Evaluating PAVE Tests

Evaluating a returned test would consist of the Postal Service examining the required hard copy reports returned by the presort product developer and, for OCR evaluation, the physical test deck. This evaluation would focus primarily on proper sortation according to DMM standards but would also include an examination of the content and clarity of supporting documentation (required to accompany mailing statements), the content, format, and clarity of facsimile postal forms, as well as the accuracy of other computer-generated documentation submitted. To be PAVE-certified, the examination would have to conclude that the results were in complete accord with the DMM standards that were applicable at the time of the test.

In many cases DMM presort standards allow for a range of correct answers to a specific sortation. As an example, the precise number of pieces to a tray or sack is not mandated by standard. Changing this parameter can create different mailings from the same address list and yet still satisfy DMM standards. For this reason, no one specific (or optimum) answer would be mandated under PAVE certification unless only one answer was correct on a specific issue.

PAVE Certification

PAVE certification would be valid for 1 year or until the next PAVE cycle. For those choosing to test during the normal test cycle, PAVE certification would be valid from January to January. Upon successful test evaluation, developers would be contacted by the Postal Service in writing and issued a PAVE certificate noting the specific software tested, the categories tested, the date of certification, and the date of certification expiration.

A list of all PAVE-certified presort product developers would be published in the Postal Bulletin or a similar publication/listing as is currently used for CASS/MASS-certified listings. This list would include the developers name, product name, version numbers, certified presort categories, and a company contact name and telephone number.

PAVE certification would not remain valid if a presort product developer made significant changes to its product within the 12 months following certification. Developers initiating such product changes would need to apply for certification for this new, changed product. A significant change would be a key alteration of the product's basic sortation logic; a major change in the content, layout, format, or availability of computer generated documentation or facsimiles, or a modification that results in significant differences in software operator use.

Some software changes would not be significant enough to require recertification. PAVE-certified presort product developers would be required to notify the Postal Service whenever changes were made to their certified products to determine whether recertification were necessary. To aid in the quick release of improved presort products to accommodate mailing industry needs, the Postal Service proposes the establishment of a toll-free telephone number, to obtain information on whether the changes would warrant recertification.

DMM-Initiated PAVE Cycle

Any significant change in the make-up and preparation standards for presorting might intersect the normal 12-month PAVE certification period. Such a change might require a presort product developer to modify its product enough to trigger a recertification or a DMM-initiated PAVE cycle. To provide time for recertification, the Postal Service would attempt to delay implementation of significant presort standard changes (those deemed significant enough to require recertification) by 120 days whenever practicable. The Postal Service would implement these changes 120 days after the final date of notification (i.e., the date of publication of the final **Federal Register** rule) whenever possible. (Some changes, such as those resulting from congressional action or postal rate commission proceedings, might require more immediate implementation.)

If the Postal Service conducted PAVE testing out of the normal cycle to accommodate such DMM changes, presort products tested and approved during this time would maintain certification for 1 year beyond the next normal test period. For instance, if a DMM change became effective May 1995, a presort product that became PAVE-certified in July 1995 (out of cycle to meet the new standard) would be issued a PAVE certificate valid from July 1995 until January 1997 (unless further DMM changes warranted significant software updating).

Out-of-Cycle Fees

Participating in the PAVE certification program during the normal testing cycle would be free of charge. In those instances when a DMM-initiated PAVE cycle was conducted, participation would also be free of charge. A fee, however, would be charged for those participating in the PAVE program outside the normal test cycle. This fee would be assessed as follows:

Test File—Initial presort category (file generation, postage and handling)—$50.00
($10.00 for each additional test category requested at the same time)

Certification—Results evaluation (presort analysis and documentation review)—$200.00
($25.00 for each additional test category submitted at the same time)

Minimum Fee—$250.00

Out-of-cycle PAVE certifications would expire at the end of the next normal test cycle (e.g., a certification obtained in June would expire December 31 of that same year).

PAVE Test Failures

Participants would receive notification of errors during PAVE test evaluations so that retesting could be accomplished within the normal PAVE cycle. Although November 15 through December 31 is proposed as an established time frame for retesting, the Postal Service would strive to expedite the mailing and evaluation of retests whenever possible. The first 2 attempts for a specific category would be free of charge. All subsequent certification attempts would be charged the out-of-cycle fees.

Software not achieving certification prior to December 31 would not be included in the list of PAVE-certified presort product developers to be published in January of each year.

Standardization of Testing Data

Based on a variety of previous comments, the Postal Service would not mandate standardization of presort software documentation, layout, and format with this proposal. The mailing documentation currently generated by presort software would be evaluated to ensure that all data necessary to support the rates claimed in the mailing category tested were present and could be readily identified and understood.

The Postal Service believes, however, that eventually a more common framework for test results needs to be established to have an efficient, accurate PAVE review and certification process.

The Postal Service proposes to explore the feasibility of having software manufacturers return an electronic file rather than hard copy documentation for future PAVE testing. From this electronic file, the Postal Service could perform computer analysis of PAVE test results, begin to develop analysis software for a computer grading solution, or print documentation in a common format for ease of review. In order to pursue this concept, the Postal Service would need to establish a common electronic file structure with standardized data fields.

Although the issue of using an electronic file is not specifically part of this proposed rule (hard copy documentation is proposed for manual evaluation for initial PAVE tests), comments concerning its eventual implementation are requested. A potential file structure has been drafted and is available on request to those wishing to comment on its content and layout.

BILLING CODE 7710-12-P

Exhibit A

15

PRESORT ACCURACY VALIDATION & EVALUATION

ORDER FORM

Fax

Company Contact — Area Code — Phone Number

Firm/Customer Name

Complete Street Address, PO Box or Rural/Hwy Contract Route and Box # — Apt/Suite #

City or Post Office — State — ZIP+4 Code

List presort software being submitted for Postal Service evaluation by name and current release number.

A. _____ D. _____

B. _____ E. _____

C. _____ F. _____

Check media configuration preferred for Postal Service validation.

- ☐ Magnetic Tape - 6250 BPI EBCDIC
- ☐ Magnetic Tape - 6250 BPI ASCII
- ☐ Magnetic Tape - 1600 BPI EBCDIC
- ☐ Magnetic Tape - 1600 BPI ASCII
- ☐ IBM 3480 Cartridge EBCDIC
- ☐ 5¼" Diskette, 1.2 MB IBM
- ☐ 3½" Diskette, 1.44 MB IBM

On the reverse side of this form, please check the applicable test categories.

Signature of Applicant _____

Date _____

UNITED STATES POSTAL SERVICE™

16

Exhibit A (reverse)

	File 101 Presorted First Class First Class	File 201 Presort 3/5 Digit Second Class	
* File 301 Basic & 3/5 Presort Third Class	* File 302 Basic & 3/5 Presort Third Class	** File 303 Carrier Route Third Class	** File 304 Carrier Route Third Class
File 814 Barcoded–Tray-Based First/Third Class Residual Option 1	File 814 Barcoded–Tray-Based First Class Residual Option 2	File 814 Barcoded–Tray-Based First Class Residual Option 3	File 814 Barcoded–Tray-Based First Class Residual Option 4
File 815 Barcoded–2-Tier Package-Based First/Third Class Residual Option 1	File 815 Barcoded–2-Tier Package-Based First/Third Class Residual Option 2	File 815 Barcoded–2-Tier Package-Based First Class Residual Option 3	File 815 Barcoded–2-Tier Package-Based First Class Residual Option 4
File 816 Barcoded–3-Tier Package-Based First/Third Class Residual Option 1	File 816 Barcoded–3-Tier Package-Based First/Third Class Residual Option 2	File 816 Barcoded–3-Tier Package-Based First Class Residual Option 3	File 816 Barcoded–3-Tier Package-Based First Class Residual Option 4
File 810 OCR Physical Test Deck Barcoded Mailings First/Third Class Residual Option 1	File 810 OCR Physical Test Deck Barcoded Mailings First/Third Class Residual Option 2	File 810 OCR Physical Test Deck Barcoded Mailings First Class Residual Option 3	File 810 OCR Physical Test Deck Barcoded Mailings First Class Residual Option 4

* Third-Class 3/5 Digit Presort validation—tests 301 and 302—must be taken and passed.

** Third-Class Carrier Route validation—tests 303 and 304—must be taken and passed.

Complete the information below only for a third or subsequent attempt to certify a machine during any test period. Test decks for the first two attempts during a normal biannual period are provided free of charge.

OCR Test Deck		
Qty	Price	Total
_____	$300.00	_____

Send payment & order form to:
PAVE PROGRAM
NATIONAL CUSTOMER SUPPORT CENTER
US POSTAL SERVICE
6060 PRIMACY PKY STE 101
MEMPHIS TN 38188-0001

Payment Method

Make check or money order payable to US Postal Service

☐ Check ☐ Money Order ☐ Visa ☐ MasterCard

Card#: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date: ____/____

_____
Authorized Personnel (please print)

_____
Signature

The signature above accepts total responsibility governing the use of this card and agrees to comply with the terms of the issuer.

BILLING CODE 7710–12–C

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–12525 Filed 5–20–94; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73 and 76

[MM Docket 94–34; DA 94–495]

Cable Services; Amendment of Equal Employment Opportunity Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 12, 1994, the Office of Communications of the United Church of Christ, the Institute for Public Representation, and the Minority Media and Employment Council (hereinafter "Petitioners") filed a Request for Extension of Time to Submit Comments to the Commission's Notice of Inquiry, FCC 94–103, released April 12, 1994. Petitioners requested that we extend the dates for submission of comments 21 days, through and including June 13, 1994, and give a comparable extension of time for the submission of reply comments. We believe that the petitioners in this case may be in a particularly good position to assist the Commission given their longstanding involvement in these issues. Accordingly, we grant the requested relief. We extend the dates for filing comments and reply comments in this proceeding to June 13, 1994, and June 28, 1994, respectively.

DATES: Initial comments due June 13, 1994; reply comments due June 28, 1994.

ADDRESSES: Federal Communications Commission, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Hope G. Cooper, Mass Media Bureau, Enforcement Division. (202) 632–7069.

SUPPLEMENTARY INFORMATION:

Order Granting Motion for Extension of Time to File Comments

Adopted: May 16, 1994
Released: May 16, 1994

By the Chief, Mass Media Bureau:

1. On April 20, 1994, the Commission adopted a Notice of Inquiry, FCC 94–103, released April 21, 1994, to obtain comment on the effectiveness of the Commission's rules, procedures, policies, standards and guidelines in promoting equality of employment opportunity. Comment and Reply Comment dates were established for May 23, 1994, and June 7, 1994, respectively.

2. On May 12, 1994, the Office of Communications of the United Church of Christ, the Institute for Public Representation, and the Minority Media and Employment Council (hereinafter "Petitioners") filed a Request For Extension of Time to Submit Comments. Petitioners requested that we extend the dates for submission of comments 21 days, through and including June 13, 1994, and give a comparable extension of time for the submission of reply comments. In support of their request petitioners stated that the 30 day time period is an insufficient amount of time to prepare a comprehensive response to issues raised in the Notice. They state that they are limited in staff size and lack the resources to respond to the Notice in such a short time. They also argue that an extension of time would aid the Commission's decisional processes by enabling a greater number of parties to participate and by allowing them the opportunity to further the quality of their submissions.

3. As set forth in § 1.46 of the Commission's Rules, 47 CFR § 1.46, it is our policy that extensions of time not be routinely granted. However, we believe that the petitioners in this case may be in a particularly good position to assist the Commission given their longstanding involvement in these issues. Accordingly, we will grant the requested relief. However, given the October 5th deadline for the Commission to submit its report to Congress, we do not intend to grant further extensions of time.

4. Accordingly, it is ordered, that the Request For Extension of Time filed by Petitioners is granted.

5. It is therefore ordered that the dates for filing comments and reply comments in this proceeding are extended to June 13, 1994, and June 28, 1994, respective.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 4(i) and 303(r) and § 0.204(b), 9.283 and 1.46 of the Commissions Rules, 47 CFR § 0.204(b), 0.283 and 1.46.

7. For further information concerning this proceeding, contact Hope Cooper, Enforcement Division, Mass Media Bureau, (202) 632–7069.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 94–12512 Filed 5–20–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[CS Docket No. 94–42; DA 94–461]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by Word of God Fellowship, Inc., the licensee of television station KMPX–TV, Decatur, Texas, to amend the Commission's Rules to add the community of Decatur, Texas, to the Dallas-Ft. Worth, Texas television market. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before July 7, 1994, and reply comments are due on or before July 22, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg or Alan E. Aronowitz, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, CS Docket No. 94–42, adopted May 5, 1994, and released May 16, 1994. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by the petitioner, proposed to amend § 76.51 of the Rules to add the community of Decatur, Texas to the Dallas-Ft. Worth television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market

designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that the television stations licensed to Dallas, Ft. Worth and Decatur do compete for audiences and advertisers in the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, the petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before July 7, 1994, and reply comments on or before July 22, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly, this action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by § 0.321 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Cable Services Bureau.

[FR Doc. 94–12510 Filed 5–20–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[CS Docket No. 94–44; DA 94–459]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule..

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by LeSEA Broadcasting Corporation, the licensee of television station KWHD (TV), Castle Rock, Colorado, to amend the Commission's Rules to add the community of Castle Rock, Colorado, to the Denver , Colorado television market. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before July 7, 1994, and reply comments are due on or before July 22, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, CS Docket No. 94–44, adopted May 5, 1994, and released May 16, 1994. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by the petitioner, proposed to amend Section 76.51 of the Rules to add the community of Castle Rock, Colorado, to the Denver television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that the television stations licensed to Denver and Castle Rock do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, the petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding

because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat.1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before July 7, 1994, and reply comments on or before July 22, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly, this action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by § 0.321 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Cable Services Bureau.

[FR Doc. 94–12511 Filed 5–20–94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[CS Docket No. 94–43; DA 94–458]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by LeSEA Broadcasting Corporation, the licensee of television station WHKE(TV), Kenosha, Wisconsin, to amend the Commission's Rules to add the communities of Kenosha and Racine, Wisconsin, to the Milwaukee, Wisconsin television market. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before July 7, 1994, and reply comments are due on or before July 22, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, CS Docket No. 94–43, adopted May 5, 1994, and released May 16, 1994. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by the petitioner, proposed to amend § 76.51 of the Rules to add the communities of Kenosha and Racine, Wisconsin to the Milwaukee television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that the television stations licensed to Milwaukee, Kenosha and Racine do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed communities to be added to a market designation and the market as a whole. Moreover, the petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before July 7, 1994, and reply comments on or before July 22, 1994. All relevant and timely

comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly, this action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by § 0.321 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Cable Services Bureau.

[FR Doc. 94–12509 Filed 5–20–94; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 59, No. 98
Monday, May 23, 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. 92-127-3]

Public Meeting; Availability of Environmental Assessment and Preliminary Finding of No Significant Impact for Determination of Nonregulated Status of Upjohn Co., ZW-20 Virus Resistant Squash

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is announcing that a public meeting will be held to discuss an environmental assessment and preliminary finding of no significant impact prepared for a determination of nonregulated status for a genetically engineered virus-resistant squash line designated "ZW-20 squash." APHIS will be accepting public comments on the environmental assessment. APHIS has previously requested public comments on any plant pest risk issues presented by the ZW-20 squash. The environmental assessment and preliminary finding indicate no significant impact on the environment from the determination that the ZW-20 squash does not present a plant pest risk and should no longer be regulated under APHIS' regulations. Based on this preliminary finding of no significant impact, APHIS has determined that an environmental impact statement need not be prepared for the issuance of this determination.

DATES: The public meeting will be held in Washington, DC, on Tuesday, June 21, 1994, from 9 a.m. to 12:30 p.m. and 1:30 to 4 p.m. local time. Consideration will be given only to comments received on or before July 7, 1994, regarding the environmental assessment.

ADDRESSES: The public meeting will be held in the Jefferson Auditorium, United States Department of Agriculture (USDA), South Building, 14th Street and Independence Avenue SW., Washington, DC. The following documents may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays: Copies of the environmental assessment and preliminary finding of no significant impact, the petition submitted by the Upjohn Company, and the comments received in response to our September, 1992, and March, 1993, **Federal Register** notices. Persons wishing to inspect these documents are requested to call ahead on (202) 690-2817.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology Permits, BBEP, APHIS, USDA, room 850 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For a copy of the environmental assessment and preliminary finding of no significant impact, please call Ms. Kay Peterson at (301) 436-7601, or write to Ms. Peterson at this address.

SUPPLEMENTARY INFORMATION: On September 4, 1992, the Animal and Plant Health Inspection Service (APHIS) issued a notice of proposed interpretive ruling (57 FR 40632-40633, Docket No. 92-127-1) in response to a petition from the Upjohn Company (Upjohn), Kalamazoo, MI, for a determination of regulatory status of its ZW-20 virus-resistant squash line. After considering the comments submitted during the 30-day comment period, APHIS determined that it was in the public interest to reopen the comment period to examine scientific issues raised by the commenters. A notice was published in the **Federal Register** on March 22, 1993 (58 FR 15323, Docket No. 92-127-2), requesting additional information on eight issues raised by respondents to Docket No. 92-127-1. On March 31, 1993 (58 FR 17044-17059, Docket No. 92-156-2), APHIS amended its regulations in 7 CFR part 340 by establishing a petition process. The petition process allows for a determination that certain plants are no longer regulated articles, and formalizes the interpretive ruling procedure which was in place when the original petition for the ZW-20 squash was submitted. To provide for a thorough review of comments and information submitted to APHIS on the ZW-20 squash, APHIS is convening a public meeting to provide a forum for an open discussion of the issues analyzed in the environmental assessment.

Procedures for the Public Meeting

Any interested person may appear and may be heard in person, by attorney, or by other representative. The meeting will be held in the Jefferson Auditorium, United States Department of Agriculture (USDA), South Building, 14th Street and Independence Avenue SW., Washington, DC, on June 21, 1994, from 9 a.m. until 12:30 p.m. and from 1:30 p.m. until 4 p.m., local time. However, the meeting may conclude earlier if all persons who have requested an opportunity to speak have been heard. Persons who wish to speak should register at the meeting location with the presiding officer before the meeting. Pre-meeting registration will begin at 8 a.m., local time, on the day of the meeting at the meeting site. Persons who have registered will be heard in the order of their registration. Attendees who do not register in advance will be allowed to speak after all scheduled speakers have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the meeting. The presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

Environmental Assessment and Preliminary Finding of No Significant Impact

APHIS regulations at 7 CFR part 340, which were promulgated pursuant to 7 U.S.C. 150aa-150jj, 151-167, and 1622n, and 31 U.S.C. 9701, regulate the introduction (importation, interstate movement, and release into the environment) of certain genetically engineered organisms and products. The regulations at § 340.6 provide for a petition process for issuing a determination that certain plants that do not present a plant pest risk no longer need to be regulated.

The crookneck squash (*Cucurbita pepo* L. cultivar YC77E ZW-20)(ZW-20), developed by Upjohn, has been considered a regulated article under 7 CFR part 340, in part because it has been engineered with coat protein (CP)

from watermelon mosaic virus 2 (WMV2) and zucchini yellow mosaic virus (ZYMV), and in part because the vector system used to transfer viral CP genes into the recipient squash was derived from the bacterial plant pathogen *Agrobacterium tumefaciens*. In addition, certain noncoding regulatory sequences were derived from plant pathogens, i.e., from *A. tumefaciens* and from cauliflower mosaic virus and cucumber mosaic virus. Field tests of the ZW–20 squash have been conducted under APHIS permits each year from 1990 through 1994 under conditions of reproductive confinement. The environmental assessments (EAs) prepared by APHIS in conjunction with the issuance of permits for field tests of ZW–20 have addressed various attributes of the squash line. The EA to be addressed at the public meeting examines the potential environmental impacts that might be associated with the unconfined cultivation of ZW–20 squash, as requested in the petition from Upjohn. The effect of a determination favorable to the petition would be that permits under the regulations would no longer be required from APHIS for field testing, importation, or interstate movement of these squash or their progeny. Importation of ZW–20 squash or seeds capable of propagation would still be subject to restrictions found in the Foreign Quarantine Notices at 7 CFR part 319. The findings that support a preliminary finding of no significant impact on the environment from a determination that the ZW–20 squash would no longer be a regulated article include the following:

1. Growing ZW–20 squash would present no significant increase in the development of new plant viruses as compared to plants infected with both ZYMV and WMV2;

2. The ability of ZW–20 squash to resist infection by WMV2 and ZYMV should not lead to this squash becoming a weed pest;

3. Pollination of free-living *Cucurbita pepo* (FLCP) plants by the ZW–20 squash is not likely to increase the weediness of any resultant progeny;

4. Introgression and maintenance of the virus resistance trait from ZW–20 squash into the gene pool of FLCP is unlikely. Based upon surveys of FLCP, the incidence of pathology or disease resulting from infection by ZYMV or WMV2 is not high enough to result in a selective pressure that would maintain the resistance genes in FLCP populations;

5. APHIS cannot identify any impacts on nontarget organisms recognized as beneficial from the unconfined cultivation of ZW–20 squash; and

6. The release of ZW–20 squash from regulation would have no identifiable impact on agricultural commodities.

The environmental assessment and preliminary finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 17th day of May 1994.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–12526 Filed 5–20–94; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 94–044–1]

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 12 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
94-090-01	Upjohn Company	03-31-94	Melon plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Oregon.
94-090-02, renewal of permit 93-053-02, issued on 05-20-93.	Upjohn Company	03-31-94	Squash plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	California, Georgia, Texas.
94-090-03	U.S. Department of Agriculture, Agricultural Research Service.	03-31-94	Gladiolus plants genetically engineered to express resistance to bean yellow mosaic virus.	Maryland.
94-090-04	Upjohn Company	03-31-94	Cucumber plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, zucchini yellow mosaic virus, papaya ringspot virus, and squash mosaic virus.	Georgia, Michigan.
94-090-05	Upjohn Company	03-31-94	Melon plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, zucchini yellow mosaic virus, papaya ringspot virus, and squash mosaic virus.	California, Georgia, Michigan.
94-090-06, renewal of permit 93-053-02, issued on 05-20-93.	Upjohn Company	03-31-94	Cantaloupe plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Texas.
94-091-02	New York State Agricultural Experiment Station.	04-01-94	Melon plants genetically engineered to express resistance to cucumber mosaic virus (CMV), zucchini yellow mosaic virus, and watermelon mosaic virus 2.	New York.
94-091-03	New York State Agricultural Experiment Station.	04-01-94	Squash plants genetically engineered to express resistance to squash mosaic virus.	New York.
94-098-02, renewal of permit 90-135-01, issued on 09-04-90.	University of Wisconsin-Madison.	04-08-94	Pseudomonas syringae genetically engineered to be avirulent through the use of Tn5.	Wisconsin.
94-105-01	Frito-Lay, Incorporated	04-15-94	Potato plants genetically engineered to express resistance to the fungus Verticillium dahliae.	Wisconsin.
94-105-02, renewal of permit 92-164-02, issued on 07-30-92.	Michigan State University.	04-15-94	Melon plants genetically engineered to express resistance to zucchini yellow mosaic virus.	Michigan.
94-110-01	University of Florida	04-20-94	Lettuce plants genetically engineered to express tolerance to the herbicide glyphosate.	Florida.

Done in Washington, DC, this 17th day of May 1994.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-12527 Filed 5-20-94; 8:45 am]

BILLING CODE 3410-34-P

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice on Proposed Actions for Southern Region; Alabama, et al.

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 215 and 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5(a) and 217.5(d), the public shall be advised, through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

In addition, Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning and Budget, 1720 Peachtree Road, NW., Atlanta, Georgia 30367-9102, Phone: 404-347-4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service

administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico will appear in the principal newspaper elected by the National Forest(s) of that state.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL.

District Rangers Decisions

Bankhead Ranger District: Northwest Alabamian, published weekly (Monday & Thursday) in Haleyville, AL.

Conecuh Ranger District: The Andalusia Star, published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District: The Tuscaloosa News, published daily in Tuscaloosa, AL.

Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL.

Talladega Ranger District: The Daily Home, published daily in Talladega, AL.

Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR.

San Juan Star, published daily in San Juan, PR.

District Ranger Decisions

El Horizonte, published weekly (Wednesday) in Fajardo, PR.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA.

District Ranger Decisions

Armuches Ranger District: Walker County Messenger, published bi-weekly (Wednesday & Friday) in LaFayette, GA.

Toccoa Ranger District: The News Observer published weekly (Wednesday) in Blue Ridge, GA.

Chestatee Ranger District: Dahlonega Nugget, published weekly (Thursday) in Dahlonega, GA.

Brasstown Ranger District: North Georgia News, published weekly (Tuesday) in Blairsville, GA.

Towns County Herald, published weekly (Tuesday) in Hiawesse, GA.

Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA.

Chattooga Ranger District: Northeast Georgian, published weekly (Wednesday) in Clarksville, GA.

Toccoa Record, published weekly (Thursday) in Toccoa, GA.

The Telegraph, published weekly (Wednesday) in Cleveland, GA.

Cohutta Ranger District: Chatsworth Times, published weekly (Tuesday) in Chatsworth, GA.

Oconee Ranger District: Monticello News, published weekly (Thursday) in Monticello, GA.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties).

Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties).

District Rangers Decisions

Ocoee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN.

Hiwassee Ranger District: Daily Post-Athenian, published weekly (Monday–Friday) in Athens, TN.

Tellico Ranger District: Monroe County Advocate, published weekly (Thursday) in Sweetwater, TN.

Nolichucky Ranger District: Greeneville Sun, published daily (Monday–Saturday) in Greeneville, TN.

Unaka Ranger District: Johnson City Press, published daily in Johnson City, TN.

Watauga Ranger District: Elizabethton Star, published daily (Sunday–Friday) in Elizabethton, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY.

District Rangers Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY.

Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Clay City, KY.

Berea Ranger District: Jackson County Sun, published weekly (Thursday) in McKee, KY.

London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY.

Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) Somerset, KY.

Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY.

Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY.

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL.

District Rangers Decisions

Apalachiocla Ranger District: The Weekly Journal, published weekly (Wednesday) in Bristol, FL.

Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL.

Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL.

Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL.

Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL.

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC.

District Rangers Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC.

Andrew Pickens Ranger District: Seneca Journal and Tribune, published bi-weekly (Wednesday and Friday) in Seneca, SC.

Long Cane Ranger District: Index-Journal, published daily (Sunday through Friday) in Greenwood, SC.

Wambaw Ranger District: News and Courier, published daily in Charleston, SC.

Witherbee Ranger District: News and Courier, published daily in Charleston, SC.

Tyger Ranger District: The Union Daily Times, published daily in Union, SC.

Edgefield Ranger District: Augusta Herald, published daily in Augusta, GA.

George Washington National Forest, Virginia

Forest Supervisor Decisions

Daily News Record: published daily in Harrisonburg, VA.

District Rangers Decisions

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA.

Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA.

Pedlar Ranger District: News-Gazette, published weekly (Wednesday) in Lexington, VA.

James River Ranger District: Virginian Review, published daily in Covington, VA.

Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA.

Dry River Ranger District: Daily News Record, published daily in Harrisonburg, VA.

Jefferson National Forest, Virginia

Forest Supervisor Decisions

Roanoke Times & World-News, published daily in Roanoke, VA.

District Rangers Decisions

Blacksburg Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA.

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the Roanoke Times and Monroe Watchman).

Glenwood Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA.

New Castle Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA.

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the Roanoke Times and Monroe Watchman).

Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA.

Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN.

Wythe Ranger District: Southwest Virginia Enterprise, published by-weekly (Wednesday and Saturday) in Wytheville, VA.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

Alexandria Daily Town Talk, published daily in Alexandria, LA.

District Ranger Decisions

Caney Ranger District: Minden Press Herald, published daily in Minden, LA.

Homer Guardian Journal, published weekly (Wednesday) in Homer, LA.

Catahoula Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA.

Colfax Chronicle, published weekly (Wednesday) in Colfax, LA.

Evangeline Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA.

Kisatchie Ranger District: Natchitoches Times, published bi-weekly (Sunday and Wednesday) in Natchitoches, LA.

Vernon Ranger District: Leesville Leader, published daily in Leesville, LA.

Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS.

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Biloxi Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Black Creek Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Bude Range District: Clarion-Ledger, published daily in Jackson, MS.

Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Strong River Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Ashe-Erambert Project: Clarion-Ledger, published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC.

District Ranger Decisions

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC.

Croatan Ranger District: The Sun Journal, published weekly (Sunday through Friday) in New Bern, NC.

French Broad District: The Ashville Citizen-Times, published daily in Asheville, NC.

Grandfather District: McDowell News, published daily in Marion, NC.

Highlands Ranger District: The Highlander, published weekly (May-Oct Tues & Fri; Oct-April Tues only) in Highlands, NC.

Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.

Toecane Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.

Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC.

Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC.

Wayah Ranger District: The Franklin, published tri-weekly (Monday, Wednesday, and Friday) in Franklin, NC.

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR.

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Jessieville Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Mena Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Poteau Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Choctaw Ranger District: Tulsa World, published daily in Tulsa, OK.

Kiamichi Ranger District: Tulsa World, published daily in Tulsa, OK.

Tiak Ranger District: Tulsa World, published daily in Tulsa, OK.

Ozark-St. Francis National Forest: Arkansas

Forst Supervisor Decisions

The Courier, published daily (Sunday through Friday) in Russellville, AR.

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR.

Buffalo Ranger District: Newton County times, published weekly (Wednesday) in Jasper, AR.

Bayou Ranger District: The Courier, published daily (Sunday through Friday) in Russellville, AR.

Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR.

Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR.

Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR.

St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR.

National Forest in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX.

District Rangers Decisions

Angelina Ranger District: The Lufkin Daily News, published daily in Lufkin, TX.

San Jacinto Ranger District: The Houston Post, published daily in Houston, TX.

Neches Ranger District: The Lufkin Daily News, published daily in Lufkin, TX.

Raven Ranger District: The Courier, published daily in Conroe, TX.

Tenaha Ranger District: The Lufkin Daily News, published daily in Lufkin, TX.

Trinity Ranger District: The Lufkin Daily News, published daily in Lufkin, TX.

Yellowpine Ranger District: The Beaumont Enterprise, published daily in Beaumont, TX.

Caddo-LBJ Ranger District—Caddo-LBJ National Grassland: Denton Record-Chronicle, published daily in Denton, TX.

Dated: May 16, 1994.

Ralph F. Mumme,

Acting Deputy Regional Forest.

[FR Doc. 94–12486 Filed 5–20–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management, States of Oregon and Washington

[OR–015–94–4410–02; G4–047]

Eastside Ecosystem Management Strategy, Pacific Northwest Region

AGENCIES: Forest Service, USDA; Bureau of Land Management, Interior.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: At the time the original **Federal Register** and local media announcements of our Notice of Intent were published (February 1, 1994, 59 FR 4680), the geographic area to be addressed in this environmental impact statement (EIS) had not been completely identified. The geographic area to be included in the analysis for the EIS has now been decided by the Oregon/Washington Bureau of Land Management (BLM) State Director and Forest Service Regional Forester. It will include all land east of the crest of the Cascade Mountains in the States of Oregon and Washington managed by the Forest Service and the BLM. The areas being added include lands managed by the BLM within the Vale, Lakeview, and Burns Districts in portions of Malheur, Harney, and Lake Counties in southeast Oregon. The subject BLM managed lands are covered by the Northern Malheur, Southern Malheur, Andrews, High Desert, and Warner Lakes Management Framework Plans, all of which may be amended or revised to incorporate the new ecosystem management strategy and rangeland reform standards and guidelines. The entire BLM Prineville District area in north central Oregon and all portions of the Baker Resource Area in northeastern Oregon will also be addressed in the EIS.

It has also been decided to hold additional public meetings throughout this area for the purposes of identifying public issues. These scoping meetings will be held in the following locations:

May 23, 1994

Walla Walla, Washington

May 24, 1994

Bend, Oregon, John Day, Oregon, Wenatchee, Washington

May 25, 1994

Lakeview, Oregon, Burns, Oregon, Okanogan, Washington

May 26, 1994

Klamath Falls, Oregon, Vale, Oregon, Colville, Washington

May 31, 1994

Spokane, Washington, La Grande, Oregon

June 1, 1994

Portland, Oregon, Yakima, Washington

June 2, 1994

Seattle, Washington

Specific locations for the meetings within these communities will be published in local newspapers of record. All meetings start at 7 p.m. PDT except the one in Vale, OR which starts at 7 p.m. MDT.

DATES: It is important for comments to be postmarked by July 2, 1994 to be considered in the formulation of alternatives in this environmental impact statement.

ADDRESSES: Send written comments concerning issues to be addressed in this EIS to Eastside Ecosystem Management Project, Attn: Scoping, 122 East Poplar Street, Walla Walla, Washington 99362.

FOR FURTHER INFORMATION CONTACT: George R. Pozzuto, EIS Team Leader, 122 East Poplar Street, Walla Walla, Washington 99362, phone (509) 522–4030.

Dated: May 17, 1994.

Nancy Graybeal,

Deputy Regional Forester.

Robert D. Rheiner, Jr.,

Associate State Director, Bureau of Land Management.

[FR Doc. 94–12485 Filed 5–20–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Lake Taylorville Watershed, Christian County, IL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notive of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations [40 CFR part 1500]; and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an

environmental impact statement is not being prepared for the Lake Taylorville Watershed, Christian County, Illinois.

FOR FURTHER INFORMATION CONTACT: Charles Whitmore, State Conservationist, Soil Conservation Service, 1902 Fox Drive, Champaign, IL 61820, 217/398–5267.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Charles Whitmore, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes is to improve water quality by trapping sediment and nonorganic materials the elements included in this plan are:

1. Two sediment retention structure.
2. Associated land treatment.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Charles Whitmore.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904–watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Charles Whitmore,

State Conservationist.

[FR Doc. 94–12543 Filed 5–20–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On April 15, 1994, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The Department is now terminating this review.

EFFECTIVE DATE: May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Debra R. Crumbie or Michael J. Heaney, Office of Antidumping Compliance, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

Background: On April 15, 1994, the Department published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand (59 FR 18099) at the request of a respondent Saha Thai Steel Pipe Company, Ltd. (Saha Thai). This notice stated that the Department would review merchandise sold in the United States by Saha Thai for the period March 1, 1993, through February 28, 1994.

Saha Thai subsequently withdrew its request for review on April 18, 1994. Under 19 CFR 353.22(a)(5), a party requesting a review may withdraw that request no later than 90 days after the date of publication of the notice of initiation. Because Saha Thai's withdrawal occurred within the time frame specified in 19 CFR 353.22(a)(5), and no other interested party has requested an administrative review for this period, the Department is now terminating this review.

This notice is published pursuant to 19 CFR 353.22(a)(5).

Dated: May 13, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–12446 Filed 5–20–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–001]

Potassium Permanganate From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 30, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China. The review covers 15 Chinese producers/exporters and 32 third-country resellers for the period January 1, 1990, through December 31, 1990. Based on our analysis of the comments received, we determine the country-wide dumping margin for the People's Republic of China to be 128.94 percent. Since none of the third-country resellers have demonstrated entitlement to a separate rate for sales made during this period or review, they will receive the same rate as their suppliers in the People's Republic of China.

EFFECTIVE DATE: May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, 20230; telephone (202) 482–4474 or 482–3814 respectively.

Background

On December 30, 1993, the Department of Commerce (the Department) published the preliminary results (58 FR 69330) of its administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) (49 FR 3898, January 31, 1984). The Department has now completed this 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 this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.60.0010 of the harmonized Tariff Schedule (HTS) The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive. The review covers 15 producers/ exporters and 32 third-country resellers for the period January 1, 1990, through December 31, 1990.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of the following respondents, Zunyi Chemical Factory

(Zunyi), Yue Pak Co. Ltd. (Yue Pak), He-Ro Chemicals, Ltd. (He-Ro), ICD (HK) Ltd, (ICD (HK)) and an interested party, Novachem, Inc. (Novahem), we held a public hearing on February 10, 1994. We received timely comments from the above-named respondents, the above-named interested party, and the petitioner, Carus Chemical Company.

Comment 1

Methodology: Zunyi and Novachem assert that, in this review, the Department should have provided them with an opportunity to respond to a separate rates questionnaire specifically based on the test announced in Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (Sparklers) on May 6, 1991 rather than that based on the separate rates criteria set forth in Iron Construction Casting from the People's Republic of China; Final Results of Antidumping Duty Administrative Review (Castings) on January 24, 1991. Zunyi and Novachem assert that in Castings, the Department stated "Our determination that the PRC is a state-controlled economy in which all entities are presumed to export under the control of the state leads us to question the application of multiple rates, absent a clear showing of legal, financial and economic independence. Thus, we conclude that a single country-wide rate is application for this case." Zunyi and Novachem contrast that with Sparklers, where the Department adopted the following position: "We have determined that exporters in non-market economy countries are entitled to separate, company-specific margins when they can demonstrate an absence of control by the central government, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of de jure absence of central control includes: (1) An absence of restrictive stipulation associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. De facto absence of central government control with respect to exports is based on two prerequisites: (1) Whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales."

Zunyi and Novachem assert that the application in this case of the test utilized in Castings is inappropriate for the following reasons. First, since questionnaires were not issued until three months after the Sparklers decision was rendered, Zunyi and Novachem maintain that reliance on an approach in place at time of initiation is inappropriate. Second, Zunyi and Novachem state that the Court of International Trade (CIT) has directed the Department to apply the Sparklers methodology in a remand of Castings, the very case on which the Department based its approach in this review. Third, Zunyi and Novachem claim that in reviews being conducted during the same time period as this one, the Department has utilized the methodology set forth in Sparklers. As an example, Zunyi and Novachem point to the 1988–1989 review of Shop Towels from the People's Republic of China, Final Results of Antidumping Duty Administrative Review, 56 FR 60,969 (Nov. 29, 1991), where the Department requested information after the preliminary determination to determine whether the respondent qualified for a separate rate under the Sparklers criteria. Zunyi and Novachem argue that not to issue a new separate rates questionnaire in this review would be arbitrary and capricious. Finally, Zunyi and Novachem assert that it is within the capacity of the Department to change methodologies within reviews and that, in light of the above claims, the Department should now issue a questionnaire based on the Sparklers test to determine whether PRC respondents qualify for a separate rate.

Petitioner points out that the separate rates test set forth in Sparklers does not, in fact, constitute a new methodology, but is merely a continuation and elaboration of that set forth in Castings. Furthermore, petitioner asserts that respondents were on notice regarding what they were required to show to obtain a separate rate under Castings, since that decision was cited in the petitioner's request for review and because the Department requested from them the information needed to make a separate rate decision. Petitioner also notes that the remand of the Department's determination in Castings was based on the fact that because the Castings test was not enunciated until the final results of that review, respondents had not been given an opportunity to attempt to demonstrate their entitlement to a separate rate, even under the Castings criteria ("a clear showing of legal, financial and economic independence"). Finally, petitioner states that the Department has broad discretion in choosing methodologies, and that the choice of methodology may vary on a case-by-case basis.

DOC Position: The Department agrees with the petitioner. The Castings test and the methodology utilized in Sparklers and most recently in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (Silicon Carbide) 59 FR 22585 (May 2, 1994) require that producers and exporters in the PRC receive a single rate unless it is clearly demonstrated that a particular entity is not subject to governmental control and therefore merits its own rate. The test employed in Sparklers and Silicon Carbide built upon that used in Castings by outlining specific criteria that we would consider in determining whether an entity had shown such autonomy. In this case, Zunyi did not demonstrate adequately that it was free of governmental control under any of these tests.

Indeed, information on the record indicates that Zunyi was controlled by municipal authorities. For example, during this period of review, Zunyi was subject to guidance from municipal authorities regarding output in terms of value and production, and was not allowed to enter into contracts with foreign entities or to export directly. (See DOC Position to Comment 2.)

Furthermore, the Department's use of a questionnaire based on the Castings test has not prejudiced respondents' position. The respondents were on notice with respect to their burden of showing their independence from governmental control if they desired to be given a separate rate. The supplemental questionnaire sent to Zunyi and other PRC entities states: "[I]f you feel that your client is entitled to a separate rate, submit for the record all documentation that supports your client's claim of legal, financial, and economic independence." Furthermore, respondents were specifically requested to provide information regarding their corporate organization, relationships with other businesses, state-ownership, decision making processes, and corporate accounting information. In addition, Part Two of Appendix V of the questionnaire, the section directed specifically to manufacturers, requested information on production for export, relationships with exporters and how pricing decisions were made with them, pricing and production methods in general, government policy directives affecting pricing and production quantity decisions, and relevant regulatory systems. Thus, respondents have already been afforded an opportunity to provide whatever information they feel may support their request for separate rates.

The fact that the Department's decision in Castings was remanded does not invalidate the fundamental approach outlined therein. In that case, the CIT found that the Department had not made clear until its final determination that the respondents had to demonstrate that they were not subject to governmental control to receive a separate rate. The CIT's decision merely requires that respondents be put on notice that they have the burden of demonstrating their independence if they wish to receive a separate rate. Respondents in this review were made aware of that burden, but were unable to establish that they were in fact entitled to any separate rate.

Finally, the Department's decision to issue a Sparklers questionnaire to a respondent in the Shop Towels case does not require that it do so in this case. In Shop Towels, the Department had found the sole responding PRC firm, an import/export firm, to be independent of governmental control in a previous review and sought only to ascertain whether that determination remained valid. The record in this review establishes that Zunyi did not meet the Sparklers standard for independence. Moreover, as already noted, respondents in the present case were provided several opportunities to submit evidence demonstrating lack of governmental control. Under these circumstances, we have determined that issuing a Sparklers questionnaire in this review was not necessary.

Comment 2

Separate Rates for PRC Producers: Zuny and Novachem state that the preliminary results do not fairly represent the information already submitted by Zunyi on the lack of state control and that Zunyi merits a separate rate. They assert that state ownership and state control are two different things. Additionally, Zunyi notes that its response included the following information which supported its claim that it functions autonomously. First, Zunyi is totally separate from the import-export corporations with which it deals; second, the import-export corporations sign a purchase contract with Zunyi according to a price agreed upon in a calculation made in U.S. dollars; third, Zunyi's selling prices are decided by the factory according to cost and market; fourth Zunyi implemented a contract system in 1987; and fifth, Zunyi is autonomous in terms of management and accounting, and assumes sole responsibility in paying taxes and for profits and losses. Based on these assertions, Zunyi and Novachem claim that they have submitted enough information to merit a separate rate for Zunyi, alleging that the Department did not ask for further information.

Petitioner argues that the evidence on the record indicates that Zunyi is not qualified to receive a separate rate, and that the Department should make an adverse assumption on this issue due to Zunyi's failure to provide certain required evidence to support its claim of independence.

DOC Position: We agree with petitioner. Based on the totality of information on the record, we have determined that Zunyi is subject to government control. First Zunyi is under the control of the Economic Commission of Zunyi City (the Commission), and the Commission gave "guiding instructions" as to the "planning of production in terms of value and quantity." Second, as a "Zhongguo Faren", Zunyi was not allowed by Chinese law to engage in contractual relations with foreign entities, nor was it allowed to export directly. Instead, it was required to export through PRC import/export companies. This point was specifically mentioned in the Sparklers test as a factor weighing against a finding of independence. Furthermore, Zunyi did not provide copies of its financial statements despite our two requests for these, nor did it provide the detailed information we requested regarding its ownership. Without this critical evidence, the Department is unable to affirm that Zunyi is entitled to separate rate status, despite the assertions Zunyi makes in its case brief.

With respect to Zunyi and Novachem's claim that the Department should have asked for any information that was lacking, the Department requested on more than one occasion critical information (*e.g.*, Zunyi's financial statements and specific information regarding ownership), and that information was not provided by Zunyi. In addition, as noted above, the information on the record is sufficient for the Department to determine that Zunyi did not possess the requisite independence to merit a separate rate.

Comment 3

Market Oriented Industry: Zunyi and Novachem assert that Zunyi operated under market conditions during the period of review and that the Department should utilize local factor prices to determine foreign market value as outlined in the methodology announced in Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China, 56 FR 175 (September 10, 1991). At the minimum, they argue, the Department should base fair market value on a surrogate economy other than Thailand.

DOC Position: Since the margin for this period is based on best information available, any questions as to which methodology would have been used have we been able to calculate a margin are moot. Furthermore, the failure of the PRC Embassy in the United States to respond to our inquiry regarding industry and market conditions in the PRC would, in any case, preclude us from determining that market conditions existed in the PRC for this industry.

Comment 4

Separate Rates Under the Reseller Provision: Zunyi and Novachem urge the Department to reconsider the decision in its preliminary results of review that the Hong Kong resellers do not qualify for separate rates under the intermediate country reseller provisions. Section 353.47 of the Department's regulations (19 CFR 353.47) calls for a separate rate to be calculated for an intermediate country reseller if all of the following criteria are met:

(1) A reseller in an intermediate country purchases the merchandise from the producer,

(2) The producer does not know (at the time of the sale) the country to which the reseller intends to export the merchandise,

(3) The merchandise enters the commerce of the intermediate country but is not substantially transformed in that country, and

(4) The merchandise is subsequently exported to the United States.

Yue Pak, He-Ro, and ICD(HK) argue that Hong Kong should be treated as the country from which the subject merchandise was exported and they should be given separate rates under this provision, which allows for qualifying intermediate country resellers to be assigned a margin based on a comparison between their above cost-of-production sales to the United States and a fair market value based on the reseller's sales in its home country or a third country, rather than the margin(s) of its supplier(s). With respect to the "enters commerce" prong, Yue Pak, He-Ro and ICD (HK) claim that since they filed import/export declarations and paid fees applicable only to imports and exports, the merchandise entered the commerce of Hong Kong, rather than merely being transshipped through Hong Kong. Furthermore, these parties note that it is uncontested that the merchandise was

not transformed between its manufacture in the PRC and its shipment to the United States.

In refuting arguments raised by petitioner, these resellers argue that (1) the length of time that merchandise remains in a third country should not be a basis for determining intermediate country reseller status, (2) the amount paid in import/export fees should not be a criterion, (3) the term "transshipment" as used by Yue Pak, He-Ro, and ICD (HK) in the questionnaire responses does not refer to the statutory meaning of the term, and (4) the export provisions of the Tariff Act cited by petitioner are not relevant to the construction of the reseller provision.

Yue Pak, He-Ro and ICD (HK) also argue that the Department's comparison of their sales and order-filling process to the practices described in the final determination in Sulfur Dyes, Including Sulfur Vat Dyes, From the People's Republic of China (Sulfur Dyes), 58 FR 7537 (February 8, 1993), is not appropriate because, "unlike respondents herein, respondents in Sulfur Dyes had separate procedures for handling merchandise which was destined to the United States as opposed to merchandise that was sold in Hong Kong."

With respect to the knowledge requirement, Yue Pak, He-Ro, and ICD (HK) state that the producers from whom they purchased the subject merchandise had no knowledge of the ultimate destination of this merchandise. Producer Zunyi, on the other hand, states that it knew, at the time of sale, the destination of the potassium permanganate it sold during the period of review.

Yue Pak, He-Ro, and ICD (HK) also claim that, since in the PRC only import and export corporations had the legal capacity to enter into "foreign economic contracts" during the period of review, purchasing from these entities rather than from the producer/manufacturer should fulfill this requirement. Zunyi and Novachem also make this point. Finally, these parties note that export of the merchandise to the United States is not at issue.

Petitioner argues that no reseller in this case meets the qualifications for a rate distinct from its producer(s) under 19 CFR 353.47. Petitioner also notes that since the intermediate country reseller provision constitutes an exception to the general rule that a reseller's rate is the rate of its supplier(s), the responding resellers have the burden to showing that each prong of the testy is fully met.

With respect to the "enters commerce" prong, petitioners assert that the merchandise was merely transshipped through Hong Kong and did not enter commerce there, noting that the questionnaire responses of Yue Pak, He-Ro, and ICD (HK) describe circumstances involved in the sales of subject merchandise through the resellers which indicate that the merchandise was never intended to enter the commerce of Hong Kong. Petitioner also cites the appraisement provisions of the tariff laws to support its proposition that to "enter commerce" is a term of art that involves merchandise which (1) is intended to be diverted into the commerce of a third country and was in fact diverted; (2) is not passing through a third country enroute to a purchaser in a different country; (3) is not merely passing through a third country; (4) is intended for consumption in the third country; and (5) is sold or offered for sale in the third country. In petitioner's view, warehousing, and/or repackaging, and/or relabelling in a third country is not considered evidence that the merchandise has entered the commerce of a country, unless there are other supporting factors. In addition, petitioner contends that a decision as to whether merchandise "enters the commerce" of a country must include consideration of whether or not the producer country receives any undue benefit by shipping through a third country.

With respect to the "knowledge" prong, petitioner asserts that resellers have not demonstrated that the producers did not know the merchandise was destined for the United States. As evidence to the contrary, they note that U.S.-specific labels were affixed to the merchandise in the PRC. Furthermore, petitioners note that Zunyi and Sinochem, the only PRC parties that responded in this review, both stated in their questionnaire responses that they were aware that some of their sales of potassium permanganate were destined for the United States.

Petitioner also points to the fact that the Hong Kong resellers did not purchase directly from the manufacturer or producer. As mentioned above, export of the merchandise to the United States is not at issue.

Finally, petitioner urges that even if a reseller in this case had been able to demonstrate that it qualified for a separate rate under the intermediate country reseller provision, Hong Kong or third country sales should not be used as the basis of foreign market value for any reseller, since there is reason to believe that sales through Hong Kong are made at below the cost of production.

DOC Position: We agree with petitioner that none of the resellers have met the requirements for separate rates in this review.

With respect to the "enters commerce" prong, we have considered the totality of the circumstances in determining whether it has been shown that this merchandise entered the commerce of Hong Kong before being shipped to the United States. No isolated factor, such as whether import/export fees or duties were paid or whether the merchandise was warehoused in Hong Kong was treated as controlling. Instead, we have evaluated all factors which may be relevant.

In this case, there are compelling indications that the merchandise was never intended to be offered for sale in Hong Kong, and that it entered the territory of Hong Kong for the sole purpose of being shipped from there to the United States. The questionnaire responses of Yue Pak, He-Ro, and ICD (HK) clearly and explicitly indicate the following order pattern. First, a U.S. customer would place an order with a Hong Kong reseller for a certain quantity of potassium permanganate. Then the Hong Kong reseller would place an order for the exact same quantity with the PRC import/export company. The import/export company would then place an order with the manufacturer for the same exact quantity which was ultimately shipped through Hong Kong to the United States. Thus, the record shows that throughout the entire procedure, the merchandise was always intended only for the U.S. market.

The treatment of the merchandise in Hong Kong, while not controlling, is also consistent with the fact that these shipments did not enter the commerce of Hong Kong. For example, Hong Kong law exempts from import/export declarations (and associated fees) shipments consigned under "through bills of lading" only. The fact that the Hong Kong resellers paid import/export fees suggests only that the merchandise was not shipped under a "through bill of lading". In addition, the fact that the Hong Kong resellers performed "various tasks" in Hong Kong in relation to the merchandise in and of itself is not sufficient to demonstrate that the merchandise entered the commerce Hong Kong.

With respect to the "knowledge" prong of the test, we note that labelling placed on the merchandise in the PRC included references to U.S. Department of Transportation specifications, Occupational Safety and Health Administration requirements, and even a U.S. "800" telephone number for

"Chemtrec". Many buyers throughout the world rely on U.S. standards regardless of origin or destination for a wide variety of products, and reference to a given country's specifications in labelling does not necessarily imply that the product is destined for sale in that country. Thus, the labelling in this case is not considered conclusive evidence of knowledge of the product's ultimate destination. However, the existence of an "800" number carries somewhat greater weight and no explanation has been offered for the inclusion of the number on the label. In fact, both Zunyi and Sinochem have stated in their questionnaire responses that they were aware at the time of sale that the merchandise was destined for the United States. After considering the totality of the evidence on the record with regard to the knowledge prong, including the ordering procedure discussed above in connection with the "enter commerce" prong, we determine that the evidence is consistent with knowledge by the producers that the merchandise would be sold to the United States, and that the resellers have failed to sustain their burden of proof with respect to this prong.

Because no reseller has shown that its suppliers were unaware that their merchandise was destined for the United States or that the shipments of potassium permanganate entered the commerce of Hong Kong, we need not reach other aspects of the reseller test. Furthermore, since no reseller has shown that it is entitled to a rate other than that of its supplier(s), we need not reach the question of whether the resellers were selling below the cost of production. Therefore, our preliminary determination that the rate for all resellers for this review should be that of their suppliers remains unchanged.

Comment 5

Yue Pak, He-Ro, and ICD (HK) state that because they were cooperative respondents in this review, they should not be "assigned" the high best information available (BIA) margin from the 1989 review.

DOC Position: These resellers have not "been assigned" a margin as individual firms. Resellers have no inherent right to a separately calculated rate, regardless of how cooperative they may be. For the reasons stated above, the circumstances in which the transactions occurred during this period do not allow the Department to calculate separate rates for these sales. Thus, we have not assigned individual rates to the resellers, and all sales for this review period will be assessed a duty based on the margin of the procedures.

Comment 6

Alternatively, Yue-Pak, He-Ro, and ICD (HK) argue that the methodology used to determine the dumping margin in the 1989 review was flawed, and that therefore the margin determined in that review should not be applied as BIA for the PRC manufacturers in this review. They also claim that in selecting a BIA margin, the Department must consider the most recent information available, and that any data on which BIA is based is rebuttable. In contesting the use of the 1989 figure, these resellers claim that the use of Thailand as a surrogate and the use of petitioner's own cost data were inappropriate in the 1989 review, and that costs were improperly calculated in that review.

DOC Position: In selecting a BIA margin for the PRC potassium permanganate industry, we followed our usual practice of assigning an uncooperative respondent the higher of the highest margin determined for any firm in any previous review, or the original investigation, or the highest rate for a responding company in the current review. See 56 FR 393. The Department's two-tier BIA methodology was upheld by the Court of Appeals in *Allied Signal Aerospace Co., et al.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993). In this case, we used the highest margin from the immediately preceding review, the 1989 review. The CIT has specifically affirmed, in *Novachem, Inc.* v. *United States*, Slip Op. 92–149 (CIT, August 28, 1992), that the Department acted reasonably in utilizing Thai factor data and petitioner's data in determining that rate. Even if the use of Thailand as a surrogate had not already been upheld by the CIT, however, the use of a margin from an earlier review does not permit a rearguing of the merits of a rate in a previous review for which the Department has issued final results of review. The appropriate time for challenging the merits of the 1989 review has passed. Thus, criticism of our use of the 1989 BIA margin is unfounded.

Comment 7

Zunyi and the importer Novachem state that Zunyi was responsive in this review, and that the Department should therefore not apply to it the same BIA rate that it applied to non-responsive PRC firms.

The petitioner states that the Department properly applied the highest rate from the 1989 review as BIA for the PRC firms, noting that this determination was proper due to the presumption of state control in a non-market economy and the fact that there was no clear showing in this review that any of the PRC manufacturers of subject merchandise are independent from the state legally, financially, or economically.

DOC Response: We agree with the petitioner. For the reasons discussed in response to Comment 2, Zunyi failed to show that it was sufficiently independent to merit a separate rate for this review. Indeed, the record contains sufficient information to determine that separate status would be inappropriate. Thus, Zunyi must be considered part of the country-wide potassium permanganate industry for the purposes of this review. Since the government of the PRC and the industry as a whole did not adequately respond to our questionnaires (most firms did not respond at all), we have followed our usual practice in assigning, as BIA for uncooperative respondents, a country-wide margin (see our response to Comment 6). When a country-wide margin is assigned, the degree of cooperativeness assessed must be that of the industry as a whole. To assign a country-wide margin based on the response of a single firm could mask dumping by other non-responsive firms within the industry. Therefore, it is not appropriate to evaluate the extent of Zunyi's cooperation.

Final Results of Review

Upon review of comments submitted, the Department has determined that the margin for all PRC manufacturers/producers/exporters of potassium permanganate for the period January 1, 1990 through December 31, 1990, is 128.94 percent. The margin for all third country exporters of potassium permanganate from the PRC for the period January 1, 1990 through December 31, 1990 shall also be 128.94 percent, the rate of their suppliers.

The Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the PRC country-wide firms will be 128.94 percent, and (2) because no non-PRC exporter has established on the record, for this administrative review, that it

qualifies as an intermediate country reseller under the terms of the statute, the cash deposit rate for all non-PRC exporters will be the rate established for the most recent period for the manufacturer of the merchandise. Specifically, that rate will be the PRC country-wide rate of 128.94 percent we have established in this administrative review.

Because any PRC firm must affirmatively show that it is entitled to a separate rate before such a rate can be given and any intermediate country reseller must affirmatively show that it is entitled to such status under the intermediate country reseller provision of the regulations (19 CFR 353.47), any new shippers will also be subject to the PRC country-wide deposit rate until they request review and demonstrate an entitlement to an exception. Therefore, there is no need for an "all others" cash deposit rate for intermediate country resellers. Furthermore, no "all others" rate will be established for the PRC. Because a country-wide rate is applied to all imports of potassium permanganate from the PRC, there is no need for an "all others" cash deposit rate for PRC entities.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tarriff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 11, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-12445 Filed 5-20-94; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 940540-4140]

Establishment of the Computer Graphics Metafile (CGM) Interpreter Test Service, Which Tests an Interpreter's Conformance to Version 1 CGM as Specified in FIPS 128-1, Computer Graphics Metafile, and the Continuous Acquisition and Life-Cycle Support (CALS) Application Profile (AP) (MIL-D-28003A)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of establishment of a CGM Interpreter Test Service for testing an interpreter's conformance to FIPS 128-1 and the CALS CGM AP.

SUMMARY: The NIST CGM Interpreter Test Service utilizes the Interpreter Validation Test (IVaT) Suite, Release 1.0 to assess whether an interpreter can correctly and completely parse a binary encoded, Version 1 CGM and produce the intended picture. The IVaT Suite consists of over 200 CGM files, an operator test script, and a set of reference pictures. Specifically, CGMs are processed by the interpreter and the resulting picture is compared to the expected reference picture. The focus of the IVaT Suite is on single element testing, rather than multiple elements. This allows for incremental testing and the specificity needed to determine whether the interpreter under test meets the test criteria.

DATES: The interpreter test service was established April 1, 1994.

ADDRESSES: Written comments concerning the CGM Interpreter Test Service and the IVaT Suite should be sent to: National Institute of Standards and Technology; ATTN: CGM Test Service, Technology Building, room A266, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Ms. Lynne Rosenthal, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975-3353, email: lsr@nist.gov.

SUPPLEMENTARY INFORMATION:

Background

The Federal Information Processing Standards Publication (FIPS PUB) 128-1, Computer Graphics Metafile, adopts the American National Standards Institute/International Organization for Standardization (ANSI/ISO) Computer Graphics Metafile, ANSI/ISO 8632.1-4:1992, which defines three versions of the Computer Graphics Metafile. FIPS 128-1 adopts all three versions.

Additionally, the FIPS 128-1 requires the use of application profiles. In particular, the FIPS 128-1 requires the use of military specification MIL-D-28003A, commonly known as the CALS CGM AP, approved in 1991 for use by all Departments and Agencies of the Department of Defense. In accordance with FIPS 128-1, the development, storage, and interchange of 2D graphical information should be in the digital format of the CGM. As a data interchange standard, CGM is suitable for the storage and exchange of graphical data (i.e., pictures) among different computers, graphical devices, and applications.

In addition to the CGM Interpreter Test Service, the NIST also operates a testing service for both CGM metafiles and generators. The validation processes for metafiles, generators, and interpreters are three distinct processes. For metafiles, the validation focuses on testing an instance of a CGM; that is, a CGM data stream. For generators, the validation focuses on testing the CGM generator and its operating environment. All three testing services test for compliance to Version 1 CGM as specified by FIPS 128-1.

Federal agencies may require conformance to FIPS 128-1 if computer graphics metafile systems are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. Agencies may require testing to determine if a CGM metafile, generator, or interpreter conforms to FIPS 128-1. A Certificate of Validation or Registered Report provided from the NIST validation test service will be a source for Federal agencies to use in making this determination. The Certificate and Registered Report will be listed in the "Validated Products List", which is issued quarterly by NIST and is available from the National Technical Information Service (NTIS), order number PB94-937301, telephone (703) 487-4650.

Obtaining Validation Services

The NIST provides validation test services on a cost-reimbursable basis. These services are available to both the producers and users of CGM files, generators, and interpreters. Upon request, NIST will supply the client

with a CGM Information Pack which will include a description of the test services and procedures.

Dated: May 17, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–12553 Filed 5–20–94; 8:45 am]

BILLING CODE 3510–CN–M

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Tuesday, June 14, 1994. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to begin the review process of the 1994 Award applicants to be recommended as Award winners. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 14, 1994, at 8:30 a.m. and adjourn at 4 p.m. on June 14, 1994. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 3, 1994, that the meeting of the Panel of Judges will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 17, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–12551 Filed 5–20–94; 8:45 am]

BILLING CODE 3510–13–M

Announcement of Meeting of National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the 79th Annual Meeting of the National Conference on Weights and Measures will be held July 17 through 21, 1994, at the Doubletree Hotel at Horton Plaza, San Diego, California. The meeting is open to the public

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, held in January, 1994, as well as the annual meeting, bring together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATES: The meeting will be held July 17–21, 1994.

LOCATION OF MEETING: Doubletree Hotel at Horton Plaza, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Carroll S. Brickenkamp, Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone: (301) 975–4005.

Dated: May 17, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–12552 Filed 5–20–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 051694E]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Squid, Mackerel and Butterfish Committee (Committee) will hold a public meeting on May 31–June 2, 1994, at the Holiday Inn, Philadelphia International Airport, 45 Industrial Highway, Essington, PA 19029; telephone: (215) 521–2400.

On May 31, the Committee will meet from 1:00 p.m. until 5:00 p.m. On June 1, the Council meeting will begin at 8:00 a.m. and is scheduled to adjourn approximately noon on June 2.

The following topics will be discussed:

(1) Amendment 5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan;

(2) Chairmen's Meeting of May 14–16;

(3) International Commission for the Conservation of Atlantic Tuna Advisors' meeting of March 23–24;

(4) Committee Reports; and

(5) Other fishery management matters.

The Council meeting may be lengthened or shortened, based on the progress of the meeting. The Council may go into closed session to discuss personnel or national security matters.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331 at least 5 days prior to the meeting date.

Dated: May 17, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–12489 Filed 5–20–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D 051694D]

North Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will hold meetings from June 5, 1994 through June 11, 1994, at the Hilton Hotel, 3rd Avenue and E Street, Anchorage, AK. The Council's Advisory Panel will begin at 1:00 p.m. on June 5, and the Scientific and Statistical Committee Panel will begin at 1:00 p.m. on June 6. The Council meeting will begin at 8:00 a.m. on June 8, and continue through June 11. All meetings will be held at the Hilton Hotel and are open to the public, with the exception of an Executive Session of the Council scheduled for noon on June 9, to receive reports on ongoing litigation.

The Council will discuss, and may take appropriate action on, the following topics:

(1) Status reports from NMFS, Alaska Department of Fish and Game, U.S. Coast Guard and NMFS Enforcement;

(2) Status report on analyses being prepared for a comprehensive rationalization program for the groundfish and crab fisheries in the Exclusive Economic Zone off Alaska;

(3) Comments on proposed rule to implement a moratorium on groundfish, halibut and crab fisheries;

(4) Status report on implementation of the Sablefish and Halibut Individual Fishing Quota program and review of draft amendments to the plan;

(5) Request of Western Pacific Council for multi-council cooperation in management of Pacific pelagic fisheries;

(6) Progress report on implementation of the North Pacific Fisheries Research Plan and set first-year fee percentage;

(7) Report on measures addressing Endangered Species Act concerns for salmon off Southeast Alaska; take action as required;

(8) Restrictions on seamount fisheries in the Gulf of Alaska;

(9) Report on bycatch of *C. opilio* crab in other fisheries;

(10) Alternatives for disposition of prohibited species catch (PSC) of salmon retained by trawlers, and progress report from Salmon Foundation;

(11) Comments on a regulatory amendment for a bycatch cap of 42,000 "other" salmon in the Catcher Vessel Operational Area of the Bering Sea/Aleutian Islands, and other associated closures;

(12) Further analysis of mesh-size regulations;

(13) Discussion paper from NMFS on electronic communications in the fisheries off Alaska;

(14) Initial review of an analysis for total weight measurement requirements;

(15) Review of a regulatory amendment, allowing rollover of excess non-trawl PSC to a specific quarter or trimester; and

(16) Preliminary analysis for an amendment to change the starting dates for the Bering Sea/Aleutian Islands pollock "A" season.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 10 working days prior to the meeting date.

May 17, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service

[FR Doc. 94–12488 Filed 5–20–94; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Contracting; Reporting Procedures on Defense Related Employment

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This document is the fiscal year 1993 list of major defense systems under 10 U.S.C. 2397b and 2397c. This document is published to assist present and former DoD employees, agency officials and defense contractors in complying with their obligation under these sections of the United States Code.

EFFECTIVE DATE: This listing is effective September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Randi Elizabeth DuFresne, Standards of Conduct Office, Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600, telephone (703) 697–5305.

Major Defense Systems

Army

ADDS
AFATDS (ATCCS)
ASAS (ATCCS)
ATACMS
AVENGER
BAT
BLACKHAWK (UH–60A/L)
BRADLEY FVS UPGRADE
COMANCHE (RAH–66)
CSSCS (ATCCS)
FAAD C21 (ATCCS)
FMTV
JAVELIN (AAWS–M)
JSTARS GSM
KIOWA WARRIOR (OH–58D)
LASER HELLFIRE
LONGBOW APACHE
LONGBOW HELLFIRE
M1A2 UPGRADE
MCS (ATCCS)
MLRS
MSE
PATRIOT P3I
PLS
SADARM
SCAMP
SINCGARS
SMART–T
STINGER RMP
TOW–2

Navy

AN/SQQ–89
AOE 6
ASPJ
C/MH–53E
CEC
CV HELO (SH–60F) SEAHAWK
CVN 68 CLASS
DDG–51
EA–6B PROWLER
F/A–18 HORNET E/F
F/A–18 C/D HORNET
F–14D TOMCAT
FDS
HARM
JSOW
LAMPS MK III (SH–60B)
LCAC
LHD 1 CLASS
LX
MCM 1
MHC 51
MIDS–LVT
MK 48 ADCAP
MK 50 TORPEDO
MLR
NESP
PHALANX CIWS (MK 15)
SM 2 (BLOCK IV)
SM 2
SSN 21/AN/BSY–2
SSN 688
STRATEGIC SEALIFT
T–45TS
T–AGOS
T–AO 187 OILER
TOMAHAWK
TRIDENT
TRIDENT II MISSILE

UHF FOLLOW-ON SAT
US/UK SSTD
V–22 OSPREY

Air Force

AMRAAM
AWACS RSIP (E–3A)
B–1B LANCER CMUP
B–2
C–130H
C–17A GLOBEMASTER III
DMSP
DSP
F–16 IWSM
F–22 (ATF)
IUS (SPACE SHUTTLE)
JDAM
JPATS
JSIPS
JSTARS
JTIDS
KC–135R
LANTIRN
MILSTAR
MINUTEMAN III GRP PHASE I
MU
NAS
NAVSTAR GPS
SBEWS
SFW
TITAN IV
TSSAM

Other DOD

BMDO
SRUAV

Dated: May 18, 1994.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–12514 Filed 5–20–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 14 June 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team I of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Herbert J. Gallagher,

COL, GS, Executive Secretary.

[FR Doc. 94–12539 Filed 5–20–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21 June 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team I of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Herbert J. Gallagher,

COL, GS, Executive Secretary.

[FR Doc. 94–12540 Filed 5–20–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 22 June 1994.

Time of Meeting: 1200–1500 (classified).

Place: Pentagon, Washington, DC.

Agenda: The Threat Team III of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Analytical Efforts Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5 U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Herbert J. Gallagher,

COL, GS, Executive Secretary.

[FR Doc. 94–12541 Filed 5–20–94; 8:45 am]

BILLING CODE 3710–08–M

Advisory Committee Notice

AGENCY: Headquarters, I Corps and Fort Lewis, DOD.

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: Yakima Training Center Cultural and Natural Resources Committee—Technical Committee.

Date: June 9, 1994.

Place: Yakima Training Center, Building 266, Yakima, Washington.

Time: 1 p.m.

Proposed Agenda: Cultural and Natural Resources Management Plan Development and Review.

All proceedings are open. For further information contact Stephen Hart, Chief, Civil Law, (206) 967–4540.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–12548 Filed 5–20–94; 8:45 am]

BILLING CODE 3710–08–M

Availability of U.S. Patent for Licensing

AGENCY: U.S. Army Research Laboratory, Electronics and Power Sources Directorate, DOD.

ACTION: Notice of availability.

In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent No. 4,247,775 for non-exclusive, exclusive or partially exclusive licensing. This patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC and concerns a Piezoelectric Dosimeter Charge.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35, United States Code, the department of the Army as represented by the Communications-Electronics Command wishes to license the U.S. patent listed above in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

ADDRESSES: U.S. Army Communications-Electronics Command,

ATTN: AMSEL–LG–L, Fort Monmouth, New Jersey 07703–5010.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, (908) 532–4112.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–12547 Filed 5–20–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Intent To Establish the Environmental Management Site Specific Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of intent to establish.

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with title 41 of the Code of Federal Regulations, § 101–6.1015(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Site Specific Advisory Board has been established for a two-year period.

The purpose of the Board is to provide the Assistant Secretary for Environmental Restoration and Waste Management with advice and recommendations on environmental management projects and issues such as risk management, economic development, future land use, and budget prioritization activities, from the perspectives of affected groups and State and local Governments. Board membership shall reflect the full diversity of views in the affected community and region and be composed primarily of people who are directly affected by site clean-up activities. Members may include, but will not be limited to, interested stakeholders from local governments, Indian Tribes, environmental and civic groups, labor organizations, universities, waste management and environmental restoration firms, and other interested parties. Representatives from DOE, the Environmental Protection Agency and state governments shall be ex-officio members of the board. Selection and appointment of group members shall be accomplished using procedures designed to ensure a diverse board membership and a balance of viewpoints. Consensus recommendations to the Department of Energy from the Board on pragmatic nationwide resolution of numerous difficult issues will help achieve the Department's objective of an integrated environmental restoration program.

Additionally, the establishment of the Site Specific Advisory board has been determined to be compelled by considerations of health and safety, essential to the conduct of Department of Energy business, and to be in the public interest in connection with the performance of duties imposed on the Department of Energy by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this advisory board may be obtained from Rachel Murphy Samuel at (202) 586–3279.

Issued in Washington, DC, on May 18, 1994.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 94–12538 Filed 5–20–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Form EIA–886, "Alternate Fuel Vehicle Suppliers' Annual Report"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed new Form EIA–886, "Alternate Fuel Vehicle Suppliers Annual Report" and Solicitation of Comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed new Form EIA–886, "Alternate Fuel Vehicle Suppliers' Annual Report".

DATES: Written comments must be submitted on or before June 22, 1994. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Frank Elsen, Office of Coal, Nuclear, Electric and Alternate Fuels, EI–523, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 254–5425, FAX (202) 254–5765.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Frank Elsen at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Current Actions.
III. Request for Comments.

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Form EIA–886 will collect data from Alternate Fuel Vehicle (AFV) suppliers (i.e., Original Equipment Manufacturers (OEMs) and Conversion Companies) according to the requirements of section 503 (b)(2) of the Energy Policy Act of 1992 (EPACT). The survey will extend to both on-road and off-road, domestically manufactured/converted and imported vehicles. Actual data are requested for the previous calendar year (e.g., 1994); planned data are solicited for the next calendar year (e.g., 1995).

II. Current Actions

This form is a new, annual data collection effort. This clearance is sought for three years.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following general guidelines are provided to assist in the preparation of responses.

As a Potential Respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 1 hour per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a Potential User:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the "Alternate Fuel Vehicle Suppliers' Annual Report".

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authorities: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which amended Chapter 35 of Title 44 of the United States Code [See 44 U.S.C. 3506(a) and (c)(1)].

Issued in Washington, DC, May 13, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–12537 Filed 5–20–94; 8:45 am]

BILLING CODE 6450–01–P

Preparation of an Environmental Impact Statement for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (the Department) announces its intent to prepare an Environmental Impact Statement, pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), in accordance with the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508) and the Department's implementing procedures (10 CFR part 1021). The purpose of this Notice is to invite public participation in the process and to encourage public dialogue on alternatives that should be considered. This Environmental Impact Statement will address the potential environmental impacts concerning the continued operation of the Pantex Plant, including near- to mid-term foreseeable activities and the nuclear component storage activities at other Department sites associated with nuclear weapon disassembly at the Pantex Plant, over the next 5 to 10 years. The Secretary of Energy committed to preparing this Environmental Impact Statement in a letter to the Governor of Texas and also in the Finding of No Significant Impact (59 FR 3674, January 26, 1994) for the Environmental Assessment for Interim Storage of Plutonium Components at Pantex (DOE/EA–0812, January 1994).

The Pantex Plant, near Amarillo, Texas, is the site at which the Department fulfills its responsibilities regarding the disassembly of nuclear weapons, certain maintenance and monitoring activities of the nuclear weapons stockpile, modification and assembly of nuclear weapons, and production of high explosive components for nuclear weapons. The Department also conducts certain quality evaluation of weapons, quality assurance testing of weapon components, and research and development activities supporting nuclear weapons at the Pantex Plant. The Department's responsibilities are mandated by statute, Presidential direction, and Congressional authorization and appropriation. Currently, most of the work taking place at the Pantex Plant is the disassembly of nuclear weapons. The nuclear components resulting from the disassembly of the weapons are either stored at the Pantex Plant; stored or processed at the Los Alamos National Laboratory in Los Alamos, New Mexico; or stored or processed at the Oak Ridge Reservation near Knoxville, Tennessee. Tritium pressure vessels are processed and the tritium is recycled at the Savannah River Site near Aiken, South Carolina.

In order to meet the Department's continuing responsibilities regarding the nuclear weapons stockpile, the Department proposes to continue the current operations of the Pantex Plant, continue the current nuclear component storage activities at the various Department sites, and implement projects and facility upgrades at Pantex consistent with current responsibilities over the next 5 to 10 years. Other alternatives being considered for discussion in this Environmental Impact Statement include the relocation of some of the Pantex Plant operations and relocation of current storage activities to other Department or Federal sites, as well as the "No Action" alternative required by NEPA. In addition, an alternative discussing the shutdown of operations at the Pantex Plant will be considered in evaluating baseline conditions.

This Notice of Intent reflects commitments made to the State of Texas and stakeholders during the public participation efforts conducted for the Environmental Assessment for Interim Storage. The Department will shortly announce other NEPA analyses that might affect the scope of this Environmental Impact Statement or how commitments will be addressed. If this occurs, updates on the proposed scope of this Environmental Impact Statement will be published and the public will be given the opportunity to discuss and comment on any changes during the scoping process.

DATES: The Department invites the general public, other government agencies, and all other interested parties to comment on the appropriate scope and content of this Environmental Impact Statement for the continued operation of the Pantex Plant and associated storage of nuclear components to ensure that the full range of significant environmental issues and

alternatives related to this proposal are addressed. The public scoping period will continue until June 30, 1994. All comments and suggestions received or postmarked by that date, whether written, oral, submitted directly to the Department, or presented during the scoping meetings, will be given equal consideration in defining the scope of this Environmental Impact Statement and the issues to be discussed. Comments received or postmarked after June 30, 1994 will be considered to the extent practicable. In addition, the Department is committed to providing opportunities for the involvement of interested individuals and groups in this and other Department planning activities outside of the formal scoping process of this Environmental Impact Statement.

Public Scoping Meetings

Public scoping meetings are scheduled to be held at the following times and locations:

Amarillo Civic Center, 400 South Buchanan, Amarillo, Texas
Date: Tuesday, June 7, 1994
Time: 1 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m.

Los Alamos High School, 1300 Diamond Drive, Los Alamos, New Mexico
Date: Thursday, June 9, 1994
Time: 1 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m.

The Holiday Inn, 325 East Flamingo Road, Las Vegas, Nevada
Date: Tuesday, June 14, 1994
Time: 1 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m.

Aiken Conference Center, 214 Park Avenue, Southwest, Aiken, South Carolina
Date: Tuesday, June 14, 1994
Time: 1 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m.

The Pollard Auditorium, 210 Badger Avenue, Oak Ridge, Tennessee
Date: Thursday, June 16, 1994
Time: 1 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m.

The Holiday Inn Capital, 550 "C" Street, Washington, DC
Date: Tuesday, June 21, 1994
Time: 1 p.m. to 4:30 p.m. and 6:30 p.m. to 9:30 p.m.

Oral and written comments may be presented at the public scoping meetings. The Department will publish additional notices on the dates and locations of the scoping meetings in local newspapers well in advance of the scheduled meetings. If it becomes necessary to change any of the dates, times, or locations of the meetings, the changes will be announced in the local media and in the **Federal Register**, if appropriate.

Oral Comments

All interested parties are invited to record their comments or suggestions concerning this Environmental Impact Statement or their request to be placed on the distribution list by calling the Pantex Plant Environmental Impact Statement Hotline at 1–800–788–0306. The Hotline will give instructions on how to record your comments.

Written Comments

Written comments or suggestions to assist the Department in identifying significant environmental issues and the appropriate scope of the Pantex Plant Environmental Impact Statement, questions concerning the Pantex Plant or the other Department sites involved, requests for speaking times, requests to be placed on the Pantex Plant Environmental Impact Statement mailing list, requests for copies of the Environmental Impact Statement Implementation Plan, and requests to be placed on the Environmental Impact Statement distribution list should be directed to: Mr. David E. Rosson, Jr., U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87185–5400.

As an alternative, written comments and requests can be submitted using the Pantex Plant Environmental Impact Statement Faxline at 1–800–822–5499. Envelopes and facsimiles should be marked: "Pantex Plant Environmental Impact Statement."

FOR FURTHER INFORMATION CONTACT: For information on DOE's NEPA process, please contact: Ms. Carol Borgstrom, Director, U.S. Department of Energy, Office of NEPA Oversight (EH–25), 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–4600 or 1–800–472–2756.

ADDRESSES: Copies of all written comments, transcripts of all oral comments, and copies of the Environmental Impact Statement Implementation Plan will be prepared and retained by the Department for inspection by the public at the following locations:

U.S. Department of Energy Public Reading Room, Reference Department, Lynn Library and Learning Center, Amarillo College, 2201 South Washington, 4th Floor, Amarillo, Texas 79109, 806–371–5400

U.S. Department of Energy Public Reading Room, Carson County Public Library, 401 Main Street, P.O. Box 339, Panhandle, Texas 79068, 806–537–3742

Los Alamos National Laboratory, Community Reading Room, Museum Parke Office Complex, 1450 Central Avenue, Suite 101, Los Alamos, New Mexico 87544, 505–665–2127 or 1–800–543–2342

Oak Ridge Public Reading Room, 55 Jefferson Avenue, Oak Ridge, Tennessee 37830, 615–576–0887

U.S. Department of Energy, Nevada Operations Office Public Reading Room, 2753 S. Highland Avenue, Las Vegas, Nevada 89109, 702–295–1274

U.S. Department of Energy, Public Document Room, 2nd Floor, University Library, University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801, 803–648–6851

U.S. Department of Energy, National Atomic Museum Public Reading Room, Kirtland Air Force Base, Building 20358, Wyoming Boulevard, Albuquerque, New Mexico 87115, 505–845–6670/4378

U. S. Department of Energy, Freedom of Information Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20825 202–586–6020

SUPPLEMENTARY INFORMATION:

Background

Historically, the Department's national security mission has included the assembly and disassembly of nuclear weapons as mandated by statute, Presidential direction, and Congressional authorization and appropriation. The Department has carried out this mission at the Pantex Plant, located in the Panhandle of Texas in Carson County near Amarillo. Assembled weapons are transported and transferred to the Department of Defense for deployment and retired weapons are returned to the Pantex Plant for disassembly. The Pantex Plant is owned by the Department and currently operated under contract with the Department by the Mason & Hanger-Silas Mason Co., Inc.

Over the years, activities at the Pantex Plant have included four major types of operations: (1) Fabrication of conventional high explosives, (2) assembly of nuclear weapons from these high explosives and prefabricated weapons components received from off-site suppliers, (3) maintenance, modification, and quality assurance testing of nuclear weapons already in the military stockpile, and (4) disassembly of nuclear weapons. The Pantex Plant has conducted these activities in a safe and responsible fashion for more than 40 years. In the past, the Pantex Plant's primary activity was the assembly of nuclear weapons. Currently, the Pantex Plant's primary activity is the disassembly of nuclear weapons, although all of the historical missions are being or may still be performed.

After the weapons have been disassembled, the disposition of the associated components depends on their characteristics, the facilities that the Department has available, and any

future need for these components. Nuclear components, those containing significant amounts of tritium or Special Nuclear Material (enriched uranium or plutonium), are either retained by the Department at the Pantex Plant or sent to facilities at other Department sites. The major nuclear components and their respective destinations are as follows:

(a) Plutonium components (pits), which are assemblies containing encapsulated weapons grade plutonium (the major constituent being the fissile plutonium isotope Pu–239), are currently retained at the Pantex Plant;

(b) Radioisotopic Thermoelectric Generators, which are components containing an encapsulated plutonium heat source (the major constituent being the nonfissile isotope Pu–238), are shipped to the Los Alamos National Laboratory where the heat source is removed and either stored or de-encapsulated and may be shipped offsite for additional processing;

(c) Secondaries, which contain enriched uranium, are sent to the Oak Ridge Reservation for storage; and

(d) Reservoirs, which are tritium-containing pressure vessels, are sent to the Savannah River Site where the tritium is purified and reused in the enduring stockpile.

Non-nuclear components are recycled, salvaged, or disposed of at the Pantex Plant or at other sites. These components include high explosives, electronics, and structural parts (some of which contain depleted uranium). Some disposition of these parts is handled through commercial firms.

The Department recently completed the Environmental Assessment for Interim Storage of Plutonium Components at Pantex. The Department evaluated the proposed interim storage of up to 20,000 pits. In response to comments received from State and local officials and other stakeholders, the Department decided to store no more than 12,000 pits at Pantex until a site-wide Environmental Impact Statement (i.e., this Environmental Impact Statement) covering all current and proposed facilities and activities at Pantex is completed. Additionally, this Environmental Impact Statement will address the environmental impacts at other sites which may result from the storage of highly enriched uranium, tritium, and weapons components resulting from the dismantlement of nuclear weapons. A Record of Decision for this Environmental Impact Statement will be issued by November 15, 1996. The Department is preparing to initiate separate NEPA documentation that will address the long-term disposition of the materials and components covered in this Environmental Impact Statement, as well as other materials.

Preliminary Identification of Alternatives and Issues

A preliminary set of alternatives and issues for evaluation in the Environmental Impact Statement has been identified below. The final set of alternatives and issues to be considered in the Environmental Impact Statement will reflect consideration of the public input received during the scoping period.

Proposed Action

The proposed action is to meet the Department's responsibilities over the next 5 to 10 years by continuing to operate the Pantex Plant with its current missions, and by continuing to store nuclear components at the Department sites currently used for that purpose. Continuing operations include production of high explosives, weapon components, assembly and disassembly of nuclear weapons, modification and maintenance of the nuclear weapon stockpile, quality assurance testing of weapon components, evaluation and surveillance of nuclear weapons, and research and development activities supporting nuclear weapons. In addition, the proposed action also involves implementing those facility upgrades, modifications, replacement facilities, and new proposed projects that are foreseeable over the next 5 to 10 years, pursuant to the missions at Pantex as established by Congress and the President. This alternative would involve storing, on an interim basis, up to 20,000 pits at the Pantex Plant. The proposed action at the Pantex Plant would include the establishment of a new research center, the potential for new mixed-waste treatment facilities, environmental cleanup and restoration activities, cooperative agreements with Texas Technical University, and activities associated with the technology transfer program. The proposed action would also include all routine activities such as infrastructure and building maintenance, operations and equipment relocations and consolidations, modifications to buildings, general landscaping, site characterization, transportation of materials, and similar support activities.

The proposed action will also consider and analyze to the extent practicable any environmental issues or impacts that may arise from the implementation of decisions by Congress and the President to allow third-party inspection at the Pantex Plant as part of any implementation of national nonproliferation policy.

Other Alternatives

The following is an initial list of other alternatives for analysis in this Environmental Impact Statement. The list is tentative and is not intended to be all-inclusive, nor does it imply any predetermined selection of any alternative or decisions. Changes to this list may occur as the result of public input and the scoping process.

Alternatives to the proposed action that have been preliminarily identified include:

1. One alternative upon which the Department requests the public's views would consist of continuing the current course of operations at the Pantex Plant and the current component storage and recycling activities at the various Department sites. This is commonly referred to as a "no action" alternative. This alternative would not include any new projects or general facility upgrades or modifications. Current Pantex operations would include those projects already authorized and funded through Fiscal Year 1995, transportation activities (both onsite and offsite), environmental cleanup and restoration activities, and routine maintenance. The interim storage of up to 12,000 pits at the Pantex Plant would continue. The storage of highly enriched uranium components at the Oak Ridge Reservation, and the recycling of tritium-containing components at the Savannah River Site and Radioisotopic Thermoelectric Generators at Los Alamos would also continue. No Action would result in curtailing dismantlement or the relocation of pits above 12,000 to another site for interim storage.

2. A second alternative upon which the Department requests the public's views would discuss those activities that could be relocated or performed somewhere other than at the Pantex Plant and the current storage locations. This alternative will discuss the transfer of some or all of pit storage activities from the Pantex Plant and relocation of the other nuclear component storage from other sites. Discussion of alternate locations for some Pantex Plant operations will include the Nevada Test Site. Discussion of alternate locations for nuclear component storage will include certain Department sites and other Federal facilities, including those currently owned and operated by the Department of Defense. This alternative will analyze and consider, to the extent practical, any environmental issues or impacts that may arise from the implementation of decisions by

Congress and the President to allow third-party inspection at the Pantex Plant as part of any implementation of national nonproliferation policy.

Department of Defense Sites as Storage Alternatives

The Department of Energy solicits comments on the inclusion of Department of Defense sites as possible alternatives for the storage of nuclear components resulting from weapons disassembly. Through the public comment process on the Environmental Assessment for Interim Storage, a number of questions were raised in regard to the possibility of using Department of Defense sites as interim storage locations. Since the fact that nuclear weapons exist at a specific Department of Defense site is classified by the Department of Defense, the Environmental Assessment analyzed three generic sites: an active nuclear weapons storage facility, an inactive nuclear weapons storage facility, and an active conventional weapons storage facility. The use of Department of Defense sites was not considered as a viable alternative to the interim storage of plutonium components at the Pantex Plant under the Environmental Assessment for Interim Storage because it was not timely (per the immediate need), would cost more, and offered no environmental benefit.

The Department of Energy is again considering Department of Defense sites as alternatives for near to mid-term storage of nuclear components at Department of Energy sites. Preliminary meetings have been held with Department of Defense staff to discuss the process for identifying facilities that are now or will be in excess to the Department of Defense needs that could be made available to the Department of Energy or those facilities where a joint tenant agreement could permit the Department to occupy a part of a larger facility. Based on the result of a facility review and preliminary assessment process, the degree of additional analysis, which may include additional scoping meetings at specific locations, and consideration of the Department of Defense facility alternatives will be determined. However, due to the same concerns regarding the classification of information about specific Department of Defense sites, the Department may be required to use the generic site method described above to discuss Department of Defense alternatives. The Department solicits comments on how to conduct the analysis of alternative Department of Defense storage sites so that maximum public participation is possible.

Preliminary Identification of Environmental Issues

The issues listed below have been tentatively identified for analysis in this Environmental Impact Statement as being applicable to the operation of the Pantex Plant and the storage of nuclear components. The list is tentative and should be considered as illustrative to facilitate public comment on the scope of this Environmental Impact Statement. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The Department invites suggestions for the addition or deletion of items on this list. Identified issues include:

—Potential effects on the public and workers from releases of radiological and hazardous materials during normal operations and from reasonably postulated accidents, including aircraft crashes;
—Potential effects of natural disasters including floods, tornadoes, and seismic events;
—Potential effect on air and water quality and other environmental consequences of normal operations and potential accidents;
—Potential cumulative effects of operations at the Pantex Plant and the storage activities at other sites, including relevant impacts from transportation activities, environmental restoration, present operations, and reasonably foreseeable activities at the sites;
—Potential socioeconomic impacts on surrounding communities, including demographics, economic base, labor pool, housing, transportation, utilities, public services/facilities, and education;
—Potential impacts on environmental justice;
—Potential effects on endangered species, economically and recreationally important species, floodplains, wetlands, and historic and archaeological resources, including paleontological sites and Native American resources;
—Potential effects on future decontamination and decommissioning decisions;
—Potential impacts from energy requirements and conservation alternatives;
—Effects on near and long-term waste management practices and activities, including pollution prevention, waste minimization, and waste stream characterization;
—Potential effects on agricultural lands and practices;
—Potential impacts of noise levels to the ambient environment and sensitive receptors;
—Potential impacts to scenic and visual resources;
—Potential impacts on land use plans, policies, and controls;
—Unavoidable adverse environmental impacts;
—Short-term uses of the environment versus long-term productivity; and
—Potential irretrievable and irreversible commitment of resources.

Related Documentation

Background information regarding the operation of the Pantex Plant is available in the public reading rooms listed above. The Department will prepare transcripts of the oral comments received during the scoping meetings. The records of all comments, both oral and written, received during the scoping period will be made available for public review in the reading rooms listed earlier. All additional background documents and references developed during the Environmental Impact Statement process will also be made available in the reading rooms. The following is a list of forthcoming NEPA documentation related to this Environmental Impact Statement that have the potential for affecting its scope:

(a) Reconfiguration Programmatic Environmental Impact Statement—On July 23, 1993, the Department published a revised Notice of Intent to prepare a Programmatic Environmental Impact Statement for reconfiguration of its nuclear weapons complex due to nuclear weapons stockpile reductions. The Department will soon issue an update to its revised Notice of Intent which will reflect recent budget and stockpile reduction decisions;

(b) Fissile Materials Storage and Disposition Programmatic Environmental Impact Statement—A draft Notice of Intent has been provided to stakeholders for review and comment. In the near future, the Department plans to publish a Notice of Intent in the **Federal Register** for a Programmatic Environmental Impact Statement to address long-term storage of all fissile nuclear materials and disposition of surplus fissile nuclear materials; and

(c) Proposed Interim Storage of Highly Enriched Uranium above the Maximum Historical Storage Level at the Y–12 Plant, Oak Ridge, Tennessee. This Environmental Assessment addresses proposed storage of highly enriched uranium above the maximum historical storage level at the Y–12 Plant. The draft Environmental Assessment has been reviewed by the State and by stakeholders, and is being revised.

Public Meeting Registration and Format

Oral and written comments may be presented at the public scoping meetings. Persons desiring to speak at any of these meetings should register by calling the Pantex Plant Environmental Impact Statement Hotline by 3 p.m. two working days in advance of the scoping meeting; writing to Mr. Rosson at the Albuquerque Operations Office address; or submitting written requests using the Pantex Plant Environmental Impact Statement Faxline. Persons wishing to speak that have not registered in advance may register at the entrance of the meeting room. Individuals speaking on behalf of an organization should identify the organization represented.

In order to solicit individual viewpoints and facilitate interactive communication between participants and representatives of the Department, separate meeting rooms will be established concurrent with the formal scoping meetings for questions and informal discussions regarding the issues in this Environmental Impact Statement.

Subsequent Document Preparation

After the completion of the public scoping process, the Department will prepare an Environmental Impact Statement Implementation Plan (the Plan) and make it available to the public upon request and place it in the public reading rooms. The Plan will record the results of the scoping process and define the alternatives and issues that the Department will evaluate in this Environmental Impact Statement. The Department intends to complete the Draft Environmental Impact Statement in November 1995 and will announce its availability in the **Federal Register**. The Department will solicit comments from the public, organizations, and other agencies on the Draft Environmental Impact Statement, and will consider all comments in its preparation of the Final Environmental Impact Statement.

Issued in Washington, DC, on May 18, 1994.

Tara O'Toole,

Assistant Secretary for Environment, Safety and Health.

[FR Doc. 94-12644 Filed 5-20-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. ER92-809-003, et al.]

Illinois Power Co., et al.; Electric Rate and Corporate Regulation Filings

May 16, 1994.

Take notice that the following filings have been made with the Commission:

1. Illinois Power Co.

[Docket No. ER92-809-003]

Take notice that on April 29, 1994, Illinois Power Company (Illinois) tendered for filing its compliance filing in the above-referenced docket. In addition, on May 5, 1994 Illinois filed revised pages to its April 29, 1994 filing in the above-referenced docket.

Comment date: May 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. AES Power, Inc.

[Docket No. ER94-890-001]

Take notice that on April 28, 1994, AES Power Inc. filed certain information as required by the Commission's April 8, 1994 letter order in Docket No. ER94-890-000. Copies of AES Power, Inc.'s informational filing are on file with the Commission and are available for public inspection.

3. New York State Electric & Gas Corp.

[Docket No. ER94-9-000]

Take notice that on New York State Electric & Gas Corporation (NYSEG) on May 9, 1994, tendered for filing an amendment to its initial rate schedule that was filed on October 6, 1993 in the above-referenced docket. NYSEG's filing in this docket pertains to an Agreement between NYSEG and Consolidated Edison Company of New York, Inc. (Con Edison), under which NYSEG may sell and Con Edison may purchase energy only or electric generating capacity and associated energy, as the parties may mutually agree from time to time. The current filing is being made at Commission's Staff's request, and explains various aspects of the agreement.

NYSEG requests that October 7, 1993 be allowed as the effective date of this filing and requests waiver of the 60-day notice requirement for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Con Edison.

Comment date: May 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. North American Energy Conservation, Inc.

[Docket No. ER94-152-001]

Take notice that on April 28, 1994, North American Energy Conservation, Inc. filed certain information as required by the Commission's February 10, 1994 letter order in Docket No. ER94-152-000. Copies of North American Energy Conservation, Inc.'s informational filing are on file with the Commission and are available for public inspection.

5. CATEX Vitol Electric Inc.

[Docket No. ER94-155-001]

Take notice that on May 2, 1994, CATEX Vitol Electric Inc. filed certain information as required by the Commission's January 14, 1994 letter order in Docket No. ER94-155-000. Copies of CATEX Vitol Electric Inc.'s informational filing are on file with the Commission and are available for public inspection.

6. Howell Power Systems, Inc.

[Docket No. ER94-178-001]

Take notice that on May 2, 1994, Howell Power Systems, Inc. filed certain information as required by the Commission's January 14, 1994 letter order in Docket No. ER94-178-000. Copies of Howell Power Systems, Inc.'s informational filing are on file with the Commission and are available for public inspection.

7. Florida Power & Light Co.

[Docket No. ER94-914-000]

Take notice that on May 6, 1994, Florida Power & Light Company filed an amendment to the agreement for the sale of power to Tennessee Valley Authority in the above-captioned docket.

Comment date: May 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. PowerNet G.P.

[Docket No. ER94-931-001]

Take notice that on April 28, 1994, PowerNet G.P. filed certain information as required by the Commission's April 22, 1994 letter order in Docket No. ER94-931-000. Copies of PowerNet G.P.'s informational filing are on file with the Commission and are available for public inspection.

9. Electric Clearinghouse, Inc.

[Docket No. ER94-968-001]

Take notice that on April 28, 1994, Electric Clearinghouse, Inc. filed certain information as required by the Commission's April 7, 1994 letter order in Docket No. ER94-968-000. Copies of Electric Clearinghouse, Inc.'s informational filing are on file with the

Commission and are available for public inspection.

10. Virginia Electric and Power Co.

[Docket No. ER94–1043–000]

Take notice that Virginia Electric and Power Company (the Company) on May 6, 1994 tendered for filing supplemental cost support information in connection with its proposed Rate Schedule No. TFC–1, Clover Transmission Facilities Charges, which is a rate schedule applicable to Old Dominion Electric Cooperative.

Copies of the filing were served upon Old Dominion and its counsel, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Co.

[Docket No. ER94–1056–000]

Take notice that on May 2, 1994, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 31, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12522 Filed 5–20–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–475–000, et al.]

Wisconsin Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 13, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Company

[Docket No. ER94–475–000]

Take notice that on May 9, 1994, Wisconsin Power and Light Company tendered for filing with the Federal Energy Regulatory Commission an amendment in its December 28, 1993, filing in this docket.

A copy of this filing has been mailed to the Public Service Commission of Wisconsin.

Comment date: May 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corporation

[Docket No. ER94–1221–000]

Take notice that on May 2, 1994, Florida Power Corporation (Florida Power) tendered for filing a change in the design of its existing wholesale rate to the City of New Smyrna Beach, Florida (New Smyrna Beach) and the Reedy Creek Improvement District (Reedy Creek). The change in the design was requested by New Smyrna Beach and has been accepted by Reedy Creek. The filing has no significant impact upon the level of the rates.

Florida Power requests that the change in the rates be made effective 60 days from the date of the filing, namely on July 1, 1994.

Florida Power states that it has served copies of its filing on New Smyrna Beach, Reedy Creek and the Florida Municipal Power Agency (a customer in the same class which has elected to remain on the existing rate design) and the Florida Public Service Commission.

Comment date: May 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER94–1222–000]

Take notice that on May 2, 1994, Boston Edison Company filed a Contract Demand Agreement between itself and the Town of Braintree Electric Light Department dated August 19, 1993. The Agreement provides for the sale by Boston Edison to Braintree of specified amounts of base and intermediate capacity and associated energy over the period November 1, 1994 through October 31, 2004. Boston Edison requests that the Agreement be allowed to become effective on November 1, 1994.

Comment date: May 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. The Cincinnati Gas & Electric Co.,

[Docket No. ER94–1223–000]

Take notice that The Cincinnati Gas & Electric Company (CG&E) on May 2, 1994, tendered for filing an Interchange Agreement with American-Municipal Power, Inc.

The Interchange Agreement proposes interchange service schedules for emergency service, interchange power, short-term power, limited term power and transmission service. The Agreement is proposed to be made effective immediately. Copies of the Agreement were served upon The Public Utilities Commission of Ohio and American-Municipal Power Ohio, Inc.

Comment date: May 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER94–1227–000]

Take notice that on May 3, 1994, Florida Power Corporation filed letters dated March 31, 1994, providing "Rate Limitation Refunds" for calendar year 1993 to four of the Company's customers in accordance with provisions in Exhibit B of their contracts limiting the total bills for service to them to the amount that would be produced by applying the applicable Florida Municipal Power Agency rate to that service. The four customers, the rate-schedule under which each is served and the Rate Limitations Refund made to each are as follows:

Rate schedule	Customer	Refund
Rate Schedule 114	City of Bartow	$737,044.64
Rate Schedule 115	City of Havana	84,868.16
Rate Schedule 116	City of Newberry	56,131.57
Rate Schedule 127	City of Mount Dora	232,079.83

Comment date: May 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Indiana Michigan Power Company

[Docket No. ER94–1228–000]

Take notice that on May 3, 1994, American Electric Power Service Corporation (AEPSCO), tendered for filing a transmission service agreement, dated May 1, 1994. The agreement, executed by Indiana Municipal Power Agency (IMPA) and Indiana & Michigan Power Company (I&M), provides for service to be made available to IMPA pursuant to the Transmission Service and Ancilary Control Area Services, Tariff of Appalachian Power Company, Columbus Southern Power Company, I&M, Kentucky Power Company, Kingsport Power Company and Wheeling Power Company (Transmission Tariff). The Commission has previously designated the Transmission Tariff as AEPSC Rate Schedule FERC No. 1. Waiver of Notice requirements was requested to accommodate an effective date of June 1, 1994.

A copy of the filing was served upon IMPA, the Indiana Utility Regulatory Commission and the Michigan Public Service Commission.

Comment date: May 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Oklahoma Gas and Electric Company

[Docket No. ER94–1229–000]

Take notice that on May 4, 1994, Oklahoma Gas and Electric Company (OG&E) tendered for filing a Letter Agreement dated April 11, 1994, with the Oklahoma Municipal Power Authority (OMPA) regarding the installation of facilities for the use and benefit of OMPA.

Copies of this filing have been sent to OMPA, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: May 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. PECO Energy Company

[Docket No. ER94–1230–000]

Take notice that on May 5, 1994, PECO Energy Company (PECO) tendered for filing an Agreement between PECO and New York Power Authority (NYPA) dated April 22, 1994.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to NYPA. In order to optimize the economic advantage to both PECO and NYPA, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on May 9, 1994.

PECO states that a copy of this filing has been sent to NYPA and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: May 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Power, Inc.

[Docket No. ER94–1232–000]

Take notice that on May 5, 1994 Entergy Power, Inc. (Entergy Power) tendered for filing as a service agreement under Rate Schedule FP a power sale agreement dated May 4, 1994 and related Service Schedule AESPI–1 (collectively the Agreement) between Entergy Power and AES Power, Inc. (AES Power). The Agreement provides for the sale to AES Power of up to 200 MW of capacity and associated energy on a unit power basis from July 1, 1994 through June 30, 1995.

Comment date: May 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. J. Howard Mock

[Docket No. ID–2832–000]

Take notice that on May 2, 1994, J. Howard Mock (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following positions:

Director, Southwestern Public Service Company

Director of Utility Engineering, Utility Engineering Corporation

Comment date: May 27, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12523 Filed 5–20–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–224–000]

Northern Natural Gas Co.; Intent to Prepare an Environmental Assessment for the Proposed EF Expansion Project and Request for Comments on Environmental Issues

May 17, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of natural gas pipeline facilities proposed in the EF Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

Summary of the Proposed Project

The applicant proposes to construct and operate the following facilities:

A. Three segments of approximately 11.95 miles of pipeline:

- 1.28 miles of 30-inch-diameter pipeline in Washington County, Minnesota (C-Line Extension);
- 2.82 miles of 30-inch-diameter pipeline in Steele County, Minnesota (D-Line Extension);
- 7.85 miles of 8-inch-diameter pipeline in Morrison County, Minnesota (Alexandria Branchline Loop); and

B. modify nine existing Town Border Stations (TBS) (see appendix 1).

The proposed facilities would be used to transport up to 19,288 Mcfd to Minnegasco, a Division of Arkla, Inc. and Great Plains Natural Gas Company.

The general location of these facilities is shown in appendix 2.[2]

Land Requirements for Construction

The proposed pipeline would be built adjacent and parallel to existing rights-of-way. Northern intends to use a 75-foot-wide construction right-of-way. About 25 to 35 feet of the planned 75-

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[1] Northern Natural Gas Company's (Northern) application was filed with the Commission under section 7(c) of the Natural Gas Act.

[2] Appendices 2 and 3 are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

foot width would use existing right-of-way. Consequently, about 35 to 50 feet of new clearing would be required in most areas. Following construction, about 25 feet of the construction right-of-way would be allowed to revert to its former land use.

Additional working space would be required adjacent to the planned construction right-of-way at road and stream crossings.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northern. Keep in mind that this is a preliminary list. The list of issues will be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The Alexandria Branchline Loop crosses residential land within the Platte River Estate.
- The pipeline would cross 4 perennial streams and 19 wetlands.
- The project may potentially impact federally listed threatened or endangered species.
- The project may cross or be near cultural resources/archeological sites.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE, Washington, DC 20426;
- Reference Docket No. CP94–224–000;
- Send a copy of your letter to: Ms. Medha Kochhar, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before June 10, 1994.

If you wish to receive a copy of the EA, you should request one from Ms. Medha Kochhar at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 3.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Medha Kochhar, EA Project Manager, at (202) 208–2270.

Lois D. Cashell,

Secretary.

APPENDIX 1—PROPOSED TOWN BORDER STATION MODIFICATIONS

No. and TBS	County/state	Facilities
1. Clarkfield No. 1.	Yellow Medicine, MN, NW¼SW¼, Sec. 4 T115N R41W.	3-inch rotary meter run, modify meter piping.
2. St. Michael No. 1	Wright, MN, NE¼SE¼, Sec. 8 T120N R23W	3-inch rotary meter run, modify meter piping, remove 1-inch regulators and install 2-inch regulators.
3. Glenwood No. 1	Pope, MN, NW¼NW¼, Sec. 6 T125N R37W	Remove existing meters, install 3-inch rotary meter run, and one 6-inch turbine.
4. St. Bonifacius No. 1	Hennepin, MN, SE¼NE¼, Sec. 32 T117N R24W	Remove existing meter, install two 3-inch rotary meters, and modify meter piping.
5. Waconia No. 1	Carver, MN, NW¼SW¼, Sec. 24 T116N R25W	Remove existing meter regulator and install two 2-inch regulators.
6. Waconia No. 1B	Carver, MN, SW¼NE¼, Sec. 24 T116N R25W	Remove existing meter and install diaphragm meter.
7. Prior Lake No. 1	Scott, MN, SE¼NW¼, Sec. 11 T114N R22W	Replace existing regulators with two 1-inch regulators and modify piping under relief valve.

APPENDIX 1—PROPOSED TOWN BORDER STATION MODIFICATIONS—Continued

No. and TBS	County/state	Facilities
8. Prior Lake No. 1A	Scott, MN, NW¼NW¼, Sec. 16 T114N R22W	Remove existing meters and install one 3-inch and one 4-inch regulator.
9. Mound No. 1	Hennepin, MN, NW¼SW¼, Sec. 22 T117N R24W	Replace existing regulator valve trim.

[FR Doc. 94–12477 Filed 5–20–94; 8:45 am]
BILLING CODE 6717–01–P

[Project No. 2348–001 Wisconsin]

Wisconsin Power & Light Comp.; Availability Of Environmental Assessment

May 17, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent license for the existing Beloit Blackhawk Hydroelectric Project, located on the Rock River in Rock County, Wisconsin, in the city of Beloit, and has prepared an Environmental Assessment (EA) for the project.

On March 10, 1994, staff issued and distributed to all parties a draft EA, and requested that comments on the draft EA be filed with the Commission within 30 days. One comment letter was received for the draft EA and is addressed in the final EA.

In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, 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 EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12478 Filed 5–20–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP94–237–000]

Arkansas Gas Consumers v. Arkla Energy Resources Co.; Complaint

May 17, 1994.

Take notice that on May 9, 1994, Arkansas Gas Consumers (AGC), filed a complaint against Arkla Energy Resources (AERCo).

AGC states that this complaint pertains to the unjust and unreasonable gas accounting practices and imbalance resolution procedures which AERCo has enforced on its system since the implementation of restructuring on September 1, 1993.

AGC states that the practices and procedures are premised on the mistaken belief that a business transaction occurs between a pipeline and its customer whenever the customer's projection of its daily gas use is later shown to have differed from its actual gas use for that day.

AGC requests the Commission to find (1) That AERCo's existing imbalance resolution methodology is unjust, unreasonable and void *ab initio* as applied to customers who receive their gas from paper pools rather than actual physical supply sources; and (2) that AERCo's methodology should be replaced with a new procedure consistent with the principles.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before June 16, 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. Answers to this complaint shall be due on or before June 16, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12479 Filed 5–20–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ER94–1261–000]

Carolina Power & Light Comp.; Filing

May 17, 1994.

Take notice that on May 11, 1994, Carolina Power & Light Company tendered for filing modifications to a Power Coordination Agreement agreed to by the parties as a part of a settlement agreement in Docket Nos. P–432–008 and P–2748–001 pursuant to a Commission order issued on April 19, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 27, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12480 Filed 5–20–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. EG94–62–000]

EI Power, Inc.; Application For Commission Determination of Exempt Wholesale Generator Status

May 17, 1994.

On May 11, 1994, EI Power, Inc. ("EI Power") 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 Power is a Delaware corporation formed to engage in project development activities associated with the direct or indirect acquisition of ownership interests in one or more eligible facilities and/or EWGs. Initially, EI Power will acquire all of the capital stock of Hanover Energy Corp., a New Jersey corporation which will develop, own and operate a proposed 900 MW gas and/or oil fired electric generating facility to be located in Muscogee County, Georgia. These development activities will be limited to activities associated with the acquisition of

ownership interests in facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in Section 32 of the Public Utility Holding Company Act of 1935.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before June 3, 1994 and must be served on applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12481 Filed 5–20–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00380; FRL–4867–2]

Workshop on Pesticide Risk Reduction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing a two and a half day workshop to review and discuss several pesticide initiatives with a focus on pesticide risk and use reduction, and to listen to input and ideas from the public. The meeting is open to the public, but seating capacity is limited to 500.

DATES: The workshop will take place on Monday, June 13, 1994, from 9 a.m. to 7 p.m.; on Tuesday, June 14, 1994 from 8:30 a.m. to 5:30 p.m.; and on Wednesday, June 15, 1994, from 8:30 a.m. to 12 noon.

ADDRESSES: The workshop will be held at the Hyatt Regency, Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, VA 22202. Telephone: (703) 418–1234, or toll free 1–800–233–1234.

FOR FURTHER INFORMATION CONTACT: For information on the workshop schedule, location and reservations: Laura Straupenieks, Walcoff and Associates, 635 Slaters Lane, Suite 400, Alexandria, VA 22314. Telephone: (703) 684–5588, Fax: (703) 548–2882. For information on the workshop agenda, presentations and format: Charles Evans, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1102 Crystal Mall #2 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7199, Fax: (703) 305–3259.

Copies of the documents and summaries of the workshop that the Agency will prepare may be obtained by contacting: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128 Bay, Crystal Mall #2 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to present to interested parties for discussion and input Agency initiatives regarding pesticide risk reduction. The workshop agenda calls for review of the following topics: pesticide use and risk reduction; Agency efforts to address the National Academy of Sciences' Kids Study recommendations; the Reduced Risk (Safer) Policy; the status of the reregistration program (including the rejection rate study); and ecological effects risk mitigation.

The format for the workshop includes several large plenary sessions with guest speakers and panel discussions, as well as a number of smaller breakout sessions, a poster session and a publications table.

Any member of the public not able to attend but wishing to submit written comments should contact Charles Evans at the address or telephone number given above. Interested parties may file written statements before the workshop or by July 15, 1994. All information submitted before or after the workshop will be included in the public docket. The public docket will be available for public inspection in Rm. 1128 Bay at the address given above, from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays.

Registrations must be received no later than May 31, 1994. Because of space limitations, participation is limited, and reservations will be processed on a first-come, first-served basis.

List of Subjects

Environmental protection.

Dated: May 16, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 94–12474 Filed 5–20–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59980; FRL–4865–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 11 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94–75, 94–76, April 3, 1994.
Y 94–77, 94–78, April 4, 1994.
Y 94–79, 94–80, April 11, 1994.
Y 94–81, 94–82, April 12, 1994.
Y 94–83, 94–84, April 20, 1994.
Y 94–85, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (4708), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NEM–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–75

Manufacturer. Confidential.

Chemical. (G) Carboxylic acid copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–76

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid copolymer.
Use/Production. (G) Coating binder/generic and coating additive/generic industrial. Prod. range: Confidential.

Y 94–77

Importer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Import. range: Confidential.

Y 94–78

Importer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Import. range: Confidential.

Y 94–79

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Carbomonocyclic carbopolycyclic polyester.
Use/Production. (S) Injection - molded parts. Prod. range: Confidential.

Y 94–80

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Carbomonocyclic carbopolyclic polyester.
Use/Production. (S) Injection - molded. Prod. range: Confidential.

Y 94–81

Manufacturer. Confidential.
Chemical. (G) Polyurethane dispersion.
Use/Production. (G) Adhesive for automobile assembly manufacture. Prod. range: Confidential.

Y 94–82

Manufacturer. Confidential.
Chemical. (G) Fatty acid, modified isophthalate polyester polymer.
Use/Production. (S) Binder for industrial. Prod. range: Confidential.

Y 94–83

Manufacturer. Ricon Resins, Inc.
Chemical. (S) (1,3-Dihydroxypropyl-2′ methylpropenate) monoester of maleic anhydride adducted polybutadiene (hydroxy propyl methacrylated).
Use/Production. (S) Coating moisture resistant for metal curative for rubber, adhesion, promoter for rubber and protection coating for polymers electronic encapsulant. Prod. range: 1,000–10,000 kg/yr.

Y 94–84

Importer. Confidential.
Chemical. (G) Polyurethane/acrylic grafted copolymers, dimethylanol salt.
Use/Production. (G) Paint. Import. range: Confidential.

Y 94–85

Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Polyimide.
Use/Production. (G) Molding resin. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: May 12, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–12475 Filed 5–20–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59336; FRL–4868–2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–94–10. The test marketing conditions are described below.

EFFECTIVE DATES: May 13, 1994. Written comments will be received until June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, D.C. 20460, (202) 260–7800.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–94–10. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently the notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA nonconfidential information center (NCIC), Rm. NEB–607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–94–10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–94–10

Date of Receipt: March 28, 1994. The extended comment period will close June 7, 1994.
Applicant: Reichhold Chemical.
Chemical: (G) Polyurethane adhesive.
Use: (G) Adhesive.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: Confidential. Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified health concerns for lung toxicity and lung cancer if inhaled, sensitization, irritation, and irritation to membranes, based on data on substances structurally similar to the TME substance. However, health concerns were mitigated because there is expected to be negligible inhalation exposure of the TME substance to workers, and adequate worker protection and hazard communication to address sensitization and irritation concerns. EPA identified no significant environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemption.

Dated: May 13, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–12476 Filed 5–20–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Port of Oakland/American President Lines, Ltd. Terminal Agreement;

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003038–003.

Title: Port of Oakland/American President Lines, Ltd., Terminal Agreement.

Parties: Port of Oakland ("Port"), American President Lines, Ltd.

Synopsis: The proposed amendment provides that in lieu of the Port's tariff wharfage rates Philippines, Micronesia & Orient Lines will be assessed 80 percent of the tariff wharfage rates for shipments of Tropical Fruit, N.O.S. destined for Overland Common Points, subject to a minimum of 50 twenty foot equivalent units per vessel until April 30, 1996.

Agreement No.: 224–200861.

Title: Port of Houston Authority/ Ryan-Walsh, Inc., Facility Assignment Agreement.

Parties: Port of Houston Authority ("Port") Ryan-Walsh, Inc. ("Ryan-Walsh").

Synopsis: The proposed Agreement would permit Ryan-Walsh to perform freight handling services at the Port during the one year term of the Agreement.

Dated: May 17, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–12482 Filed 5–20–94; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200506–002.

Title: Burns International Harbor General Cargo, Terminal Operating Agreement.

Parties: Indiana Port Commission ("Port"), Lakes and Rivers Transfer, a Division of Jack Gray Transport, Inc.

Filing Agent: Hopewell Darneille, III, Verner, Liipfert, Bernhard, McPherson & Hand, 901 15th Street NW., Washington, DC 20005–2301.

Synopsis: The proposed amendment; (1) Extends the Agreement through December 31, 1998; (2) requires the general cargo terminal operator to make certain additional equipment investments; (3) deletes Transit Shed No. 1; (4) revises the compensation provisions ; (5) provides an increased minimum guaranteed tonnage; (6) revises the reporting and payment procedures; (7) revises the general cargo marketing commitments; and (8) makes certain other related changes.

Dated: May 17, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–12484 Filed 5–20–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

CM Bank 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 June 16, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *CM Bank Holding Company*, Lake Charles, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Calcasieu Marine National Bank of Lake Charles, Lake Charles, Louisiana.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *GNB Bancshares, Inc.*, Gainesville, Texas; to acquire 100 percent of the voting shares of Lake Cities Financial Corporation, Lake Dallas, Texas, and thereby indirectly acquire Lake Cities State Bank, Lake Cities, Texas.

2. *Guaranty National Bancshares, Inc.*, Wilmington, Delaware; to merge with Lake Cities Financial Corporation, Lake Dallas, Texas, and thereby indirectly acquire Lake Cities State Bank, Lake Cities, Texas.

3. *New American Bank Holding Corporation*, Corpus Christi, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Corpus Christi, Texas.

Board of Governors of the Federal Reserve System, May 17, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-12507 Filed 5-20-94; 8:45 am]

BILLING CODE 6210-01-F

Firstbank of Illinois, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 June 13, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firstbank of Illinois, Inc.*, Springfield, Illinois; to engage *de novo* through its subsidiary, FFG Trust, Inc., Springfield, Illinois, in performing trust company functions pursuant to § 225.25(b)(3); providing investment and financial advice pursuant to § 225.25(b)(4); providing data processing and data transmission services pursuant to § 225.25(b)(7); and performing real estate and personal prorperty appraisals pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

Board of Governors of the Federal Reserve System, May 17, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-12508 Filed 5-20-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91A-0330]

Calgene, Inc.; Availability of Letter Concluding Consultation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a letter from FDA to Calgene, Inc., notifying the firm that the agency has concluded that FLAVR SAVR™ tomatoes have not been significantly altered when compared to varieties of tomatoes with a history of safe use. FDA also is announcing the availability of a written summary of the consultation between Calgene and the agency concerning FLAVR SAVR™ tomatoes, which consultation was conducted in accordance with the agency's policy on foods derived from new plant varieties. FDA is publishing this document to bring to closure the public process that began with a May 1992 notice announcing a request from Calgene for an advisory opinion concerning FLAVR SAVR™ tomatoes.

ADDRESSES: Submit written requests for single copies of the FDA letter and the written summary (free of charge) to the Food and Drug Administration, Center for Food Safety and Applied Nutrition, Biotechnology Policy Branch (HFS-206), 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your request. FDA's letter and the written summary are available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9523.

SUPPLEMENTARY INFORMATION:

In a letter dated August 12, 1991, Calgene, Inc., requested an advisory opinion under § 10.85 (21 CFR 10.85) concerning whether FLAVR SAVR™ tomatoes are food and, therefore, subject to the same regulation as other tomato varieties. In developing the FLAVR SAVR™ tomato, Calgene used recombinant deoxyribonucleic acid (DNA) techniques to introduce an antisense polygalacturonase (PG) gene. The sense PG gene, normally present in tomatoes, encodes the enzyme PG, which is associated with the breakdown of pectin (a constituent of the cell wall in tomato fruit). The principle underlying the FLAVR SAVR™ tomato is that the antisense PG gene suppresses the production of the PG enzyme, resulting in ripe fruit that remains firm for an extended period, which allows fresh market tomatoes to be vine-ripened for enhanced flavor.

In the **Federal Register** of May 29, 1992 (57 FR 22984), FDA issued a policy statement (the 1992 policy statement) that clarifies the agency's interpretation of the Federal Food, Drug, and Cosmetic Act (the act) with respect to foods derived from new plant varieties. On that same date, FDA announced Calgene's advisory opinion request (57 FR 22772), and requested public comment. FDA believed that such a notice was in the public interest because that request was the first made to FDA regarding the status of a whole food produced by the new methods of gene transfer.

In light of the publication of the 1992 policy statement, FDA now believes that the status of a particular product, such as the FLAVR SAVR™ tomato, should be addressed through a consultation with the agency consistent with the principles outlined in that statement. As a result of that consultation, FDA has notified Calgene, in a letter dated May 17, 1994, that the agency has concluded that FLAVR SAVR™ tomatoes have not been significantly altered when compared to varieties of tomatoes with a history of safe use (21 CFR 170.30(f)(2)). FDA has prepared a written summary of the agency's consultation with Calgene. The written summary includes a response to the comments received on the Calgene advisory opinion request, including comments contained in a citizen petition (Docket No. 92P-0222/CP1) filed in accordance with § 10.30 (21 CFR 10.30).

FDA believes that this notice brings to closure the public process that began with the agency's announcement of Calgene's advisory opinion request.

FLAVR SAVR™ tomatoes contain the kanamycin resistance gene (the *kan*^{r} gene) that encodes the enzyme aminoglycoside-3′-phosphotransferase II (APH(3′)II). In the **Federal Register** of July 16, 1993 (58 FR 38429), FDA announced that Calgene had filed a food additive petition (FAP 3A4364) proposing that the food additive regulations be amended to provide for the safe use of APH(3′)II as a processing aid in the development of new varieties of tomato, oilseed rape, and cotton. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule that amends the agency's food additive regulations to provide for the safe use of APH(3′)II as a processing aid in the development of new varieties of tomato, oilseed rape, and cotton. The agency evaluated the safety of APH(3′)II in the context of FAP 3A4364 and not as part of the consultation with Calgene that is the subject of this notice.

Dated: May 17, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-12494 Filed 5-18-94; 12:39 pm]

BILLING CODE 4160-01-F

[Docket No. 94N-0179]

Astra USA, Inc., et al.; Withdrawal of Approval of 62 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 62 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table below have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
70-014	Furosemide Injection, U.S.P., 10 milligrams (mg)/ milliliter (mL) (Ampules).	Astra USA, Inc., P.O. Box 4500, Westborough, MA 01581-4500.
70-026	Nitroglycerin Injection, U.S.P.	International Medication Systems, Ltd., 1886 Santa Anita Ave., South El Monte, CA 91733.
70-087	Dopamine Hydrochloride Injection, U.S.P., 40 mg/mL (Vials)	Astra USA, Inc.
70-089	Dopamine Hydrochloride Injection, U.S.P., 80 mg/mL (Ampules).	Do.
70-090	Dopamine Hydrochloride Injection, U.S.P., 80 mg/mL (Vials)	Do.
70-093	Dopamine Hydrochloride Injection, U.S.P., 160 mg/mL (Vials).	Do.
70-094	Dopamine Hydrochloride Injection, U.S.P., 160 mg/mL (Ampules).	Do.
70-459	Clonidine Hydrochloride Tablets, U.S.P., 0.3 mg	Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977.
70-460	Clonidine Hydrochloride Tablets, U.S.P., 0.2 mg	Do.
70-461	Clonidine Hydrochloride Tablets, U.S.P., 0.1 mg	Do.
70-565	Perphenazine and Amitriptyline Hydrochloride Tablets, U.S.P., 2 mg/10 mg.	
70-574	Perphenazine and Amitriptyline Hydrochloride Tablets, U.S.P., 4 mg/50 mg.	Do.
70-595	Perphenazine and Amitriptyline Hydrochloride Tablets, U.S.P., 4 mg/25 mg.	Do.
70-620	Perphenazine and Amitriptyline Hydrochloride Tablets, U.S.P., 4 mg/10 mg.	Do.
70-621	Perphenazine and Amitriptyline Hydrochloride Tablets, U.S.P., 2 mg/25 mg.	Do.
70-675	Lorazepam Tablets, U.S.P., 0.5 mg	Do.
70-676	Lorazepam Tablets, U.S.P., 1 mg	Do.
70-677	Lorazepam Tablets, U.S.P., 2 mg	Do.
71-152	Bretylium Tosylate Injection, 50 mg/mL	Astra USA, Inc.

ANDA no.	Drug	Applicant
71–815	Sulfamethoxazole and Trimethoprim Tablets, U.S.P., 400 mg/80 mg.	Shionogi USA, Inc., 3848 Carson St., suite 206, Torrance, CA 90503.
71–816	Sulfamethoxazole and Trimethoprim Tablets, U.S.P., 800 mg/160 mg.	Do.
72–020	Droperidol Injection, U.S.P., 2.5 mg/mL (Syringes)	Astra USA, Inc.
72–028	Fentanyl Citrate 0.05 mg/mL and Droperidol 2.5 mg/mL Injection (Syringes).	Do.
72–071	Nalbuphine Hydrochloride Injection, 10 mg/mL (Ampules)	Do.
72–072	Nalbuphine Hydrochloride Injection, 10 mg/mL (Syringes)	Do.
72–074	Nalbuphine Hydrochloride Injection, 20 mg/mL (Ampules)	Do.
72–075	Nalbuphine Hydrochloride Injection, 20 mg/mL (Syringes)	Do.
72–082	Naloxone Hydrochloride Injection, U.S.P., 0.02 mg/mL, Preservative Free (Vials).	Do.
72–083	Naloxone Hydrochloride Injection, U.S.P., 0.02 mg/mL, Preservative Free (Syringes).	Do.
72–084	Naloxone Hydrochloride Injection, U.S.P., 0.02 mg/mL, Preservative Free (Ampules).	Do.
72–085	Naloxone Hydrochloride Injection, U.S.P., 0.02 mg/mL (Ampules).	Do.
72–087	Naloxone Hydrochloride Injection, U.S.P., 0.4 mg/mL, Preservative Free (Vials).	Do.
72–088	Naloxone Hydrochloride Injection, U.S.P., 0.4 mg/mL, Preservative Free (Syringes).	Do.
72–089	Naloxone Hydrochloride Injection, U.S.P., 0.4 mg/mL (Ampules).	Do.
72–090	Naloxone Hydrochloride Injection, U.S.P., 0.4 mg/mL, Preservative Free (Ampules).	Do.
72–092	Naloxone Hydrochloride Injection, U.S.P., 1 mg/mL (Syringes).	Do.
72–093	Naloxone Hydrochloride Do. Injection, U.S.P., 1 mg/mL (Ampules).	
72–106	Propoxyphene Napsylate and Acetaminophen Tablets, U.S.P., 100 mg/650 mg.	Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233–3599.
72–212	Pancuronium Bromide Injection, 2 mg/mL (Ampules)	Astra USA, Inc.
72–275	Propranolol Hydrochloride Tablets, U.S.P., 60 mg	Mylan Pharmaceuticals Inc., 781 Chestnut Ridge Rd., P.O. Box 4310, Morgantown, WV 26505–4310.
80–324	Prednisolone Tablets, U.S.P., 5 mg	West-ward Pharmaceutical Corp., 465 Industrial Way West, Eatontown, NJ 07724.
80–370	Chlorpromazine Hydrochloride Injection, U.S.P.	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299.
84–328	Hydroflumethiazide with Reserpine	Do.
85–121	Atropine Sulfate and Meperidine Hydrochloride Injection	Do.
85–641	Dexamethasone Sodium Phosphate Injection, U.S.P., 4 mg/mL.	Do.
86–165	Cyproheptadine Hydrochloride Tablets, U.S.P., 4 mg	Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552.
86–332	Meperidine Hydrochloride Injection, U.S.P., 10 mg/mL	International Medication Systems, Ltd.
88–585	Dicyclomine Hydrochloride Tablets, U.S.P., 20 mg	Pioneer Pharmaceuticals, Inc., 209 40th St., Irvington, NJ 07111.
88–731	Methocarbamol Tablets, U.S.P., 500 mg	Do.
88–949	Folic Acid Tablets, U.S.P., 1 mg	Do.
89–082	Methocarbamol Tablets, U.S.P., 750 mg	Do.
89–361	Dicyclomine Hydrochloride Capsules, U.S.P., 10 mg	Do.
89–390	Carisoprodol Tablets, U.S.P., 350 mg	Do.
89–449	Aluminum Hydroxide, 80 mg and Magnesium Trisilicate, 20 mg.	Pennex Products Co., Inc., Pennex Dr., Verona, PA 15147.
89–592	Chlorzoxazone Tablets, U.S.P., 250 mg Inc. Pioneer Pharmaceuticals,.	
89–781	Meperidine Hydrochloride Injection, U.S.P., 25 mg/mL (Vials)	Astra USA, Inc.
89–782	Meperidine Hydrochloride Injection, U.S.P., 50 mg/mL (Ampules).	Do.
89–783	Meperidine Hydrochloride Injection, U.S.P., 50 mg/mL (Vials)	Do.
89–785	Meperidine Hydrochloride Injection, U.S.P., 75 mg/mL (Vials)	Do.
89–786	Meperidine Hydrochloride Injection, U.S.P., 100 mg/mL (Ampules).	Do.
89–787	Meperidine Hydrochloride Injection, U.S.P., 100 mg/mL (Vials).	Do.
89–948	Chlorzoxazone Tablets, U.S.P., 500 mg	Pioneer Pharmaceuticals, Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective June 22, 1994.

Dated: May 10, 1994.

Murray M. Lumpkin,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 94–12555 Filed 5–20–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0181]

Fujisawa USA, Inc., et al.; Withdrawal of Approval of 22 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 22 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
70–228	Sulfamethoxazole and Trimethoprim Concentrate for Injection, USP, 80 milligrams (mg)/milliliters (mL) and 16 mg/mL.	Fujisawa USA, Inc., Parkway North Center, Three Parkway North, Deerfield, IL 60015–2548.
70–411	Vincristine Sulfate Injection, USP, 1 mg/mL	Do.
71–270	Tolazamide Tablets, 250 mg	Interpharm, Inc., 3 Fairchild Ave., Plainview, NY 11803.
71–271	Tolazamide Tablets, 500 mg	Do.
71–299	Sulfamethoxazole and Trimethoprim Tablets, USP, 400 mg/80 mg	Do.
71–300	Sulfamethoxazole and Trimethoprim Tablets, USP, 80 mg/160 mg	Do.
71–621	Cholestyramine Resin Bars (Caramel)	Parke-Davis, 2800 Plymouth Rd., Ann Arbor, MI 48105.
71–739	Cholestyramine Resin Bars (Raspberry)	Do.
83–147	Sterile Cortisone Acetate Suspension, USP, 25 mg/mL 50 mg/mL	Steris Laboratories,Inc., P.O. Box 23160, Pheonix, AZ 85063–3160.
84–356	Edetate Disodium Injection, USP, 150 mg/mL	Do.
85–028	Hydrocortisone Ointment, USP, 1%	Clay-Park Labs, Inc., 1700 Bathgate Ave., Bronx, NY 10457.
85–663	Hydrocortisone Lotion, USP, 1%	Do.
86–466	Aminophylline Oral Solution, USP, 105 mg/5 mL	Fisons Corp., 755 Jefferson Rd., P.O. Box 1710, Rochester, NY 14603–1710.
87–885	Potassium Chloride for Injection Concentrate, USP	Fujisawa USA, Inc. Parkway North Center, Three Parkway North, Deerfield, IL
87–912	Triamcinolone Acetonide Cream, USP, 0.1%	Pharmafair Inc., 110 Kennedy Drive, Hauppauge, NY 11788
87–921	Triamcinolone Acetonide Cream, USP, 0.025%	Do.
87–922	Triamcinolone Acetonide Cream, USP, 0.5%	Do.
88–032	Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Ointment, USP, 0.125%.	Do.
88–165	Prednisolone Sodium Phosphate Ophthalmic Solution, USP, 1%	Do.
88–385	Sulfacetamide Sodium Ophthalmic Solution, USP, 30%	Do.
88–415	Prednisolone Sodium Phosphate Ophthalmic Solution, USP, 0.125%	Do.
89–914	Hydrocortisone Acetate Cream, USP, 1%	Parke-Davis.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective June 22, 1994.

Dated: May 10, 1994.

Murray M. Lumpkin,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 94–12554 Filed 5–20–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. June 7, 1994, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 6 p.m.; Nancy T. Cherry or Stephanie A. Milwit, Scientific Advisors and Consultants Staff (HFM–21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 31, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will participate in a general discussion of the clinical development of, and trial design issues for, vaccines for the prevention of Lyme disease.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug (IND) applications or product licensing applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. June 9, 1994, 8:30 a.m., and June 10, 1994, 8 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 9, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, June 10, 1994, 8 a.m. to 9 a.m.; closed committee deliberations, 9 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 31, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 9, 1994, the committee will discuss: (1) The labeling of succinylcholine chloride injection (neuromuscular blocking agent) new drug applications (NDA's) 8–453, Burroughs Wellcome and Co.; 8–845, Abbott Laboratories; 8–847, Bristol-Myers Squibb Co.; and 80–997, Organon, Inc.; and (2) adverse experience associated with the administration of 5 percent lidocaine for spinal anesthesia, NDA 20–098/S–04, Astra Pharmaceutical Products, Inc. On June 10, 1994, the committee will hear a progress report on the metabolism of lidocaine by human liver tissues.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to NDA 19–627 and IND 40,069. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. June 14, 1994, 1 p.m., and June 15, 1994, 9 a.m., Bldg. 12, conference rm., National Center for Toxicological Research (NCTR), Jefferson, AR.

Type of meeting and contact person. Open committee discussion, June 14, 1994, 1 p.m. to 5 p.m.; open board discussion, June 15, 1994, 9 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; closed board deliberations, 2:30 p.m. to 3:30 p.m.; Ronald F. Coene, NCTR (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

General function of the board. The board advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs to fulfill regulatory responsibilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments.

Open board discussion. The board will conduct a review of the Science Advisory Board's Site Visit Team draft reports on two research programs of the center: (1) Biochemical and Molecular Markers Program, and (2) Transgenics Program. The board will engage in discussions on these reports and come to a final conclusion on the recommendations to be made to the Director concerning these center programs. The center will also provide progress reports on the recommendations of two previously reviewed research programs: (1) The Nutritional Modulation of Risk and Toxicity Program, and (2) the Applied and Environmental Microbiology Program. A final agenda will be available beginning June 7, 1994, from the contact person.

Closed board deliberations. On June 14, 1994, the board will discuss personal information concerning individuals associated with these review programs, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)).

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 27, 1994, 9:30 a.m., and June 28, 1994, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

A limited number of overnight accommodations have been reserved at the Holiday Inn. Attendees requiring overnight accommodations must contact the hotel at 301–589–0800 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, June 27, 1994, 9:30 a.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 4:30 p.m.; closed committee deliberations, June 28, 1994, 8 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4:30 p.m.; Harry R. Sauberman, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2080. If anyone who is planning to attend the meeting will need any special assistance, as defined under the American with Disabilities Act, please notify the contact person.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 5, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a proposed protocol for performing scientific and clinical evaluations of hearing aids for the purpose of substantiating manufacturer performance claims.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. June 28, 1994, 10:30 a.m., and June 29, 1994, 8 a.m., Quality Hotel, Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD.

A limited number of overnight accommodations have been reserved. Attendees requiring overnight accommodations must contact the hotel at 301–589–5200 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Closed committee deliberations, June 28, 1994, 10:30 a.m. to 4:30 p.m.; open public hearing, June 29, 1994, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 6 p.m.; Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD, 301–594–3090.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 15, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding pending and future device submissions. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Open committee discussion. The committee will discuss classification of bone filling and augmentation materials, and classification of dental amalgam filling material and dental product ingredient labeling.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in

accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 17, 1994.

Linda Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–12493 Filed 5–20–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–782–PN]

RIN 0938–AG45

Medicare Program; Noncoverage of Electrostimulation of Salivary Glands for the Treatment of Xerostomia (Dry Mouth)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces the Medicare program's proposal not to cover electrostimulation of the salivary glands for the treatment of xerostomia secondary to Sjogren's syndrome, and electrostimulation devices, such as the Salitron System. Public Health Service (PHS) studies show that there are insufficient data to establish the clinical utility of electrostimulation, to evaluate its long-term effectiveness, and to identify those xerostomia patients who would benefit from this procedure. Also, PHS reports that electrostimulation is not widely accepted as a treatment for xerostomia secondary to Sjogren's syndrome. Therefore, it does not meet HCFA's criteria for effectiveness.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 22, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–782–PN, P.O. Box 26688, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–782–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Francina C. Spencer (410) 966–4614.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

A. Program Description

Section 1862(a)(1)(A) of the Social Security Act (the Act) generally prohibits payment for any expenses incurred for items or services "which, * * * are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." We have interpreted this statutory provision to exclude from Medicare coverage medical and health care services and items that are not demonstrated to be safe and effective by acceptable clinical evidence. This prohibition applies to items for which claims are submitted under Medicare's durable medical equipment (DME) benefit.

B. Medicare Coverage of Electrostimulation of Salivary Glands for the Treatment of Xerostomia (Dry Mouth) Secondary to Sjogren's Syndrome

Patients with chronic xerostomia complain of a continual feeling of oral dryness, have difficulty eating dry foods, and are susceptible to increased tooth decay, oral pain, tongue fissures, and infection. Saliva contains proteins and enzymes that aid digestion, conduct electrolytes necessary to maintain hard tooth enamel, and produce antibacterial agents to control oral bacteria. Salivary gland dysfunction leads to difficulty in speaking, chewing, swallowing, and tasting. A decrease in salivary secretion may result from damage to the salivary glands caused by chronic infection, irradiation, or systemic diseases such as hypertension, diabetes, or Sjogren's syndrome. Sjogren's syndrome is a chronic, inflammatory, and autoimmune disease in which the salivary and tear glands undergo progressive destruction by lymphocytes and plasma cells resulting in decreased production of saliva and tears.

Treatment for xerostomia varies considerably. If Vitamin C tablets, gum, and hard candy do not stimulate salivation in patients with some salivary gland function, artificial saliva using either an atomizer or an intraoral reservoir are used. While these methods relieve the symptoms of chronic xerostomia, they usually offer only temporary relief. Oral drugs such as pilocarpine and pyridostigmine are effective in increasing salivation if there are some functioning salivary gland tissues. However, because of side effects and contraindications, the usefulness of these drugs is limited.

On March 27, 1987, Biosonics, Inc. requested marketing approval by the FDA of the Salitron System. This device is a battery-powered, hand-held electrostimulation device for stimulating salivation from existing glandular tissue by delivering a small electrical stimulus to the mouth using a probe with two metal electrodes. It is used for patients with xerostomia secondary to Sjogren's syndrome with residual salivary tissue in the oral and pharyngeal regions. Physicians use the device to screen patients to determine a response to electrostimulation before prescribing the system. After reviewing the recommendation of the Dental Devices Panel, FDA's Center for Devices and Radiological Health, the FDA

granted premarket approval for the Salitron System on May 18, 1988. The approval was announced in the July 14, 1988, notice entitled "Biosonics; Premarket Approval of the Salitron System" (53 FR 26673). At this time, the Salitron System is the only device approved for marketing by the FDA for electrostimulation of salivary glands.

Currently, Medicare does not have a national policy for covering electrostimulation of salivary production for treating xerostomia secondary to Sjogren's syndrome. Without a national policy, Medicare carriers have authority under section 1842(a) of the Act to make coverage decisions within the parameters set by the statute, regulations, and program instructions. Some carriers are paying for electrostimulation of the salivary glands using the Salitron System and others are not because they question the medical efficacy of the treatment. This has resulted in inconsistent coverage policies among carriers.

C. Recommendation Not to Cover Electrostimulation of Salivary Production in the Treatment of Xerostomia Secondary to Sjogren's Syndrome

On May 26, 1988, Biosonics requested that Medicare issue a national policy decision that would provide for coverage of the Salitron System. Based on our evaluation of their request, we consulted the HCFA Physicians Panel. The Panel recommended that OHTA evaluate the safety and effectiveness of the Salitron System as well as the criteria used to identify xerostomia patients who would benefit from the device.

On October 4, 1988, we asked OHTA to conduct a full assessment of the safety and effectiveness of the Salitron System and to develop patient selection criteria. To conduct this assessment, OHTA solicited information from clinicians, appropriate private organizations, researchers, other government agencies, other components of PHS, and the National Institutes of Health (NIH). OHTA evaluated studies, data provided to the FDA, published articles, and information from respondents to the March 2, 1989, notice entitled "National Center for Health Services Research and Health Care Technology Assessment; Assessment of Medical Technology" (54 FR 8829). In that notice, OHTA announced that it was assessing the patient criteria for electrostimulation of salivary glands for the treatment of xerostomia secondary to Sjogren's syndrome and an electrostimulation device's acceptability, cost, and effectiveness relative to other therapies.

On July 30, 1990, we received OHTA's assessment "Salivary Electrostimulation in Sjogren's Syndrome" with a bibliography of literature and investigations evaluating electrostimulation of salivary glands. (A copy of this assessment is included as an addendum to this proposed notice.)

According to OHTA, from the limited studies as well as data provided to the FDA, it appears that electrostimulation of salivary glands may be useful in managing xerostomia in certain patients. OHTA, however, states that there are insufficient data to determine the clinical utility of electrostimulation, to evaluate its long-term clinical effectiveness, and to identify xerostomia patients who would benefit from this procedure. Also, OHTA has determined that electrostimulation is not widely accepted as an effective method for treating xerostomia secondary to Sjogren's syndrome and that other treatments, such as the use of Vitamin C tablets, gum, hard candy, and artificial saliva, are available.

NIH advised OHTA that guidelines specifying the types and conditions of xerostomia patients who would benefit from electrostimulation cannot be developed without further clinical studies of well-characterized patient populations. Given the single published study showing that only patients with residual salivary flow in an unstimulated state will respond to electrostimulation, NIH suspects that those individuals are likely to respond as well to other means of salivary stimulation.

OHTA reviewed the published study, the preliminary investigation, and the study presented to the FDA. The 1988 study by M. Steller and associates ("Electrostimulation of Salivary Flow in Patients with Sjogren's Syndrome" Journal of Dental Research 1988; 67(60): 1334 through 1337) revealed that only 3 of 13 patients using an active device showed a significant response in salivary production when compared to the response of the placebo device group. The 1986 preliminary investigation conducted by W. W. Weiss and associates ("Clinical Trial of an Electronic Stimulatory Device in the Management of Xerostomia" Journal of Oral and Maxillo-facial Surgery November 1986: M10) did not include a control group or any quantitative assessment of salivary response, duration of response, or long-term assessment of efficacy. Moreover, 7 of the 9 patients tested had residual saliva production before treatment and may have been exhibiting a tactile response to the probe. The 1988 study by N. Talal and associates ("The Clinical Effects of Electrostimulation on Salivary Function of Sjogren's Syndrome Patients" Rheumatology International June 1992; 12(12) 43 through 45), upon which the FDA based its approval, describes the clinical effects of electrostimulation in 77 patients. Salivary production was measured at the start of the study, at 2 weeks, and at 4 weeks. The researchers reported that salivation was higher among the group using an active device than the placebo device group. However, because of a misunderstanding about the length of the study, about half of the subjects dropped out of the study by the fourth week.

Thus, OHTA concluded that additional, long-term studies with larger patient populations are needed to define the specific degrees of salivary dysfunction that would respond to electrostimulation and to determine how long it takes to determine if salivary glands have been regenerated. These studies could help determine whether a single salivary response to electrostimulation or some other test, such as a lip biopsy, should be used to help identify those patients who may benefit from electrostimulation. In addition, OHTA stated that to determine the effectiveness of electrostimulation, studies should include information regarding concomitant therapy and the duration of the salivary response to compare the device to other therapies. Studies and subsequent management should include quantitative assessment of salivary function, assessment of oral conditions, and subjective patient evaluations.

The comments OHTA received from knowledgeable clinicians were inconsistent. Some clinicians state that electrostimulation is safe and effective while others suggest that the method has been inadequately tested and are not convinced that it is more effective than other simple, less costly stimulation techniques.

After OHTA's published report, Biosonics requested review of additional data on the use of the Salitron System. On September 21, 1990, we submitted the data to OHTA. OHTA reported on October 26, 1990, that this data had been presented to the FDA and was included in the OHTA assessment of July 30, 1990. OHTA concluded that the treatment could be reassessed when additional data from a larger patient population is available to evaluate the long-term clinical effectiveness of electrostimulation and identify those xerostomia patients who

would benefit from an electrostimulation device.

On November 2, 1990, we submitted to OHTA another request for a review of data from Biosonics. On November 14, 1990, OHTA informed us that it had previously reviewed this data and referred us to its October 26, 1990, recommendation.

On October 9, 1992, Biosonics requested a reassessment and submitted two new articles on electrostimulation for xerostomia published in "Geriatric Consultant" and "Rheumatology International." One article reported a physician's experience in treating 33 patients for 6 months. The other article reported on the unpublished clinical study evaluated by the FDA in 1988. We have determined that the medical evidence and conclusions upon which OHTA's assessment is based are still accurate based on our own medical expertise and a thorough review of all the medical literature on the subject since the 1990 assessment.

II. Provisions of This Proposed Notice

OHTA concluded that there are insufficient data to determine the clinical utility of electrostimulation, to evaluate its long-term clinical effectiveness, and to identify xerostomia patients who would benefit from this procedure and that electrostimulation is not widely accepted as an effective treatment for xerostomia. Based on these conclusions, we have determined that electrostimulation of salivary glands and the electrostimulation device, the Salitron System, do not meet our criteria for effectiveness. Therefore, we propose to publish a final notice announcing a national coverage decision that Medicare does not cover electrostimulation of salivary glands for treating xerostomia secondary to Sjogren's syndrome.

The provisions of this notice would not affect any existing Medicare regulations. However, they would be incorporated in the Medicare Coverage Issues Manual (HCFA Pub. 6).

III. Response to Comments

Because of the large number of items of correspondence we normally receive on proposed notices, we are not able to acknowledge or respond to them individually. We will consider all comments that we receive by the date and time specified in the DATES section of this preamble, and if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

V. Regulatory Impact Statement

A. Introduction

Currently, Medicare does not have a national policy for covering electrostimulation of salivary production for treating xerostomia secondary to Sjogren's syndrome. Medicare carriers have authority to make coverage decisions within the parameters set by the statute, regulations, and program instructions. Because this service is not ordered often and because of the low total allowed charges by Medicare Part B for this service, less than $26,000 in calendar year (CY) 1991, and no reported payments in CY 1992, we believe this proposed notice would result in negligible savings during calendar years 1994 through 1998.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians prescribing and suppliers distributing a device to stimulate salivary production from existing glandular tissue are considered to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

The Medicare program paid for 41 electrostimulation devices during CY 1991 totaling an estimated $26,000 at an average cost of approximately $630 each. It appears that carriers are no longer paying for this electrostimulation device, thereby explaining why no invoices for this device were processed in CY 1992. In the absence of this notice, it is possible that the number of devices prescribed by physicians would increase and carriers would resume payment. Physicians have at least two alternate methods for treating xerostomia. One method is to rely on the use of artificial saliva in conjunction with the sipping of liquids for moisture. The second alternative is the use of gums and candies to induce saliva. Since there are alternative treatment methods, we believe this proposed notice would affect physicians and beneficiaries minimally.

Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this proposed notice would not result in a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this proposed notice was not reviewed by the Office of Management and Budget.

(Secs. 1861 and 1862 of the Social Security Act (42 U.S.C. 1395x and 1395y))

(Catalog of Federal Domestic Assistance Program No 93.774, Medicare—Supplementary Medical Insurance)

Dated: March 3, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: April 7, 1994.

Donna E. Shalala,

Secretary.

ADDENDUM—AHCPR HEALTH TECHNOLOGY ASSESSMENT REPORTS, 1990

Salivary Electrostimulation in Sjogren's Syndrome

Number 8

Patient Selection Criteria for Electrostimulation of Salivary Production in the Treatment of Xerostomia Secondary to Sjogren's Syndrome

Prepared by: Martin Erlichman

Introduction

Electrostimulation has been introduced as a technique for increasing salivary output in the treatment of patients with xerostomia (dry mouth) secondary to Sjogren's syndrome. The procedure uses an electrostimulation device (salivation electrostimulator) to increase salivary production from existing glandular tissue. The device delivers a small electrical stimulus to the mouth via a probe. The electrostimulation device consists of an electric control module, a connecting cord, and a hand-held stimulus probe with two metal electrodes. The device may be battery-powered. Patients with residual salivary tissue in the oral and pharyngeal regions who

demonstrate a decrease in the flow rate of saliva are potential candidates for this procedure.

Xerostomia may be the result of Sjogren's syndrome, other diseases, medications, or radiation therapy to the head and neck. To determine that the xerostomia has resulted from Sjogren's syndrome, clinicians also confirm the presence of keratoconjunctivitis sicca (dry eye) and a positive lip biopsy with or without the presence of a connective tissue disease. It is estimated that more than one million people, mostly women, suffer from Sjogren's syndrome in the United States.[1]

Xerostomia is usually defined as a symptom that exists when saliva production is less than 0.1 mL/min (or 0.1 g/min). However, the symptom of xerostomia has been reported to appear when normal salivary output declines by approximately 50%, regardless of the starting value. Normal saliva production has been estimated to be 600 mL/24h.[2] Patients with chronic xerostomia complain of a continual feeling of oral dryness and find it difficult to eat dry foods.[3] In addition to the subjective complaints, the patient with salivary gland dysfunction is susceptible to increased dental caries, oral pain, frequent infections, and difficulties in speaking, chewing, and swallowing.[4] Several tests are available for measuring salivary function. According to Fox et al,[5] evaluation of salivary gland function can be assessed by stimulated saliva collection and analysis. The biopsy of the salivary glands, usually obtained from the lower lip, is used to differentiate true Sjogren's syndrome from other forms of salivary gland dysfunction.

The approach to the treatment of this condition varies considerably. In some patients, xerostomia may be managed by sipping water frequently. Other patients stimulate salivary flow with sugarless mints or gum.[6] Salivary substitutes such as a carboxymethylcellulose-based artificial saliva have been used by some patients to supplement low quantities of salivary flow. Pharmacologic agents have been introduced to treat the oral dryness of salivary gland dysfunction in patients where unstimulated salivary flow was low or nonexistent but where some functional salivary gland tissue existed. Fox et al[4] reported that pilocarpine was effective for relieving xerostomia by increasing natural salivary function. The production of endogenous saliva is of greatest benefit to the patient both for its convenience and the importance of natural saliva to oral functions. Recently, attempts to increase saliva production have utilized electrical stimulation. Preliminary investigations were reported by Weiss et al[7] in 1986.

This report will examine the published literature and other available evidence to evaluate the electrostimulation of salivary production and determine if there are xerostomic patients who would benefit from this procedure.

Background

Sjogren's syndrome is a chronic inflammatory and autoimmune disease in which the salivary and lacrimal glands undergo progressive destruction by lymphocytes and plasma cells resulting in decreased production of tears and saliva.[8] Sjogren's syndrome is seen predominantly in middle-aged elderly women.[9] Females are involved 10 times more commonly than males. Secondary effects of xerostomia include impairment in the normal movement of lips and tongue, thereby hampering speech, mastication, and swallowing.[10] Additional signs include oral soreness, adherence of food to buccal surfaces, fissuring of the tongue, an altered sense of taste, and a marked increase in dental caries and infection. Soreness and redness of the mucosa are usually the result of candidal infection, which is found in approximately 70% of the Sjogren's syndrome patients.[11]

Complaints resulting from dryness of the mouth are varied and often describe the difficulties encountered in trying to eat dry foods without sufficient lubrication.[11] Many subjects require frequent ingestion of liquids. They may resort to carrying water bottles or hard candy.

The parotid gland enlarges in many patients secondary to cellular infiltration and ductal obstruction. Usually asymptomatic and self-limited, the enlargement can be recurrent and associated with pain or erythema. Focal infiltrates of lymphocytes are also found in the minor salivary glands of the lower lip. Biopsy provides histologic confirmation and quantification of the degree of infiltration.

The subjective imprsssion of xerostomia, or oral dryness, may not reflect actual salivary gland capabilities.[12] Salivary flow rate estimation is a sensitive indicator of salivary gland function. A suction cup is used to obtain parotid saliva from the gland after the tongue is stimulated with citric acid. Although the parotid glands make the major contribution to the total salivary flow, the submandibular glands are the most consistently affected glands in patients with Sjogren's syndrome. Measurement of parotid function may result in false-normal valuse. In Sjogren's syndrome, measurement of the submandibular/sublingual secretions are a sensitive indicator of salivary gland hypofunction. According to Fox et al[12] alterations in submandibular/sublingual function have the greatest impact on the sensation of oral dryness.

Another useful technique for studying the salivary glands is lip biopsy. The technique is a sensitive and specific diagnostic procedure for Sjogren's syndrome. It is well tolerated and causes no disfigurement. The changes in the minor glands of the lower lip show a close correlation with those in the major salivary glands.[11] In addition to confirming the diagnosis, biopsy allows quantification of the degree of lymphocytic infiltration and tissue damage. Aggregates of lymphocytes within the acinar tissue are scored. An aggregate of 50 or more cells represents a focus. The number of foci within $4mm^2$ of glandular tissue is determined and constitutes the focus score. A focus score of more than 1 is characteristic of Sjogren's syndrome.[8]

Salivary scintigraphy, which measures the uptake, concentration, and excretion of technetium pertechnetate by the major salivary glands, is also a sensitive index of glandular function. However, it is expensive, requires exposure to a radionuclide, and has little advantage over the other two procedures.[8]

The symptoms of dry eyes and dry mouth in the absence of any drug treatment or other disorder likely to be causal suggest a diagnosis of Sjogren's syndrome.[11] According to Talal[8] the diagnosis of Sjogren's syndrome is based upon the confirmed presence of two of the following three criteria: (1) a focus score of more than 1 in the labial salivary gland biopsy, (2) dry eye (keratoconjunctivitis sicca), and (3) an associated connective tissue or lymphoproliferative disorder. The triad of dry eyes, dry mouth, and a connective tissue or collagen disease, usually rheumatoid arthritis, is termed secondary Sjogren's syndrome.[11] Dry eyes and dry mouth in the absence of a collagen disease is referred to as primary Sjogren's syndrome. The use of diuretics, anti-hypertensive drugs, antihistamines, antipsychotic, and antidepressants may diminish lacrimal and salivary gland function.[13] Because the use of anticholinergic drugs as well as a number of other medications may be the single most frequent cause of xerostomia, it is essential to estsblish the presence of focal lymphoid infiltrates and autoimmunity in a patient suspected of having Sjogren's syndrome. Supportive serologic data would include the presence of antinuclear antibodies, an elevated erythrocyte sedimenation rate, and the presence of anti-SS-A and anti-SS-B antibodies.

Treatment of xerostomia is difficult and includes preventing caries, treating and retreating oral candidiasis, and attempting to relieve the symptoms of dry mouth by increasing fluid intake, replacing absent saliva with saliva substitutes, or stimulating the remaining glandular tissue to secrete. Patients presenting with milder stages of xerostomia may benefit from frequent small sips of water or other fluids such as fruit nectars, and this may be as effective as any other means of alleviating symptoms. Sialagogues such as vitamin C tablets, sugarless chewing gum, mints, or hard candies may offer temporary relief through masticatory or gustatory stimulation. For other patients, saliva substitutes may ameliorate symptoms and possibly increase salivary flow. Efforts at relieving the symptoms of chronic xerostomia through the use of salivary substitutes and by stimulating salivary flow usually offer only temporary relief from dryness. Nevertheless, appropriate management of patients with xerostomia requires that those patients whose salivary flow can be increased by means of sialagogues be distinguished from those patients whose salivary flow cannot be stimulated, or whose flow is insufficiently stimulated.[14] Patient response can be tested with the use of a mechanical (paraffin chewing) or a gustatory (citric acid) stimulant.[15] The placement of citric acid crystals or a 2% citric acid solution in the mouth will stimulate demonstrable salivary flow within a few minutes in responsive patients.[12,14]

Where stimulation of salivary flow by sialagogues has been ineffective, saliva

substitutes have been applied symptomatically to alleviate mucosal discomfort and to air oral functioning.[10] Artifical saliva substitutes usually contain carboxymethylcellulose with or without the presence of natural mucins. Carboxymethylcellulose is used to impart lubrication and viscosity. Saliva substitutes that contain natural mucins maintain a surface tension similar to that of natural salival. Salts are added to artifical saliva to mimic the electrolyte content of natural saliva.[15] According to Brastings,[16] mucin-containing salivas are preferred by patients because carboxy-methylcellulose compounds seem to be uncomfortably sticky. Preparations containing mucin are considered to provide formualtions that most closely resemble human saliva.[17] When applied using an atomizer, saliva substitutes wet the oral cavity for about 30 minutes.[18] In addition, intraoral reserviors have been designed to allow continuous wetting of the oral surfaces. Recently, a denture with a palatal reservoir for artificial saliva has been constructed. The reservoir holds 2–3 cc of substitute and needs to be refilled every 2–5 hours.[16] Several saliva substitutes are available and appear to be most successful when used at night.[3]

Parasympathomimetic drugs have been used as pharmacologic sialagogues in the treatment of xerostomia. Fox et al[4] demonstrated that in persons with documented salivary gland disease who have some functional salivary gland tissue, an orally administered systemic agent is effective in relieving xerostomia and increasing silivary output. Orally administered pilocarpine increases the production of saliva by parotid and submandibular or sublingual glands and relieves the sensation of oral dryness. The investigators suggest that a sustained-release form of the drug may offer increased therapeutic benefit. Scully[11] recommends pyridostigmine because it is longer acting with fewer side effects than other pharmacologic agents. According to Vissink et at[14] the usefulness of pharmacologic sialagogues is limited because of their side effects and contraindications.

By application of the concept of electrically stimulating nerves to elicit a response, electrostimulation was developed for use in the oral cavity to stimulate the salivary reflex. Investigators have reported that electro-stimualtion increases salivary output and should be used to treat patients with xerostomia secondary to Sjogren's syndrome.[37] The cost of a battery-operated, hand-held stimulus probe that can provide electrical stimulation to the tongue and hard palate is approximately $1,500.

Rationale

Proponents of electrostimulation as a method to increase salivary production suggest that this procedure enhances the patient's ability to generate saliva by augmenting normal physiologic salivary reflexes. Salivary secretion is normally controlled by reflex stimulation with effector nerve impulses traveling along sympathetic as well as parasympathetic nerves to the glands. Sympathetic nerve stimualtion produces a sparse viscous secretion, whereas the parasympathetic nerve stimualtion produces a voluminous watery secretion.[19] The dual secretion (saliva) is a flued mixture produced from paired major salivary glands (parotid, submandibular, and sublingulal) and many smaller aggregations of minor salivary glands imbedded in the submucosa of the cheeks, lips, hard and soft palates, and tongue.

Proponents believe that xerostomia secondary to Sjogren's syndrome can be caused by interruption of the stimulus that elicits salivation at the effector site; such interruption results from loss of glandular tissue with replacement by round cell infiltration, scar, or fatty tissue. They postulate that an electronic device that touches the tongue and roof of the mouth simultaneously will stimulate tactile receptors, taste receptors, and intrinsic muscle mechanoreceptors within the mucosa of the dorsum of the tongue and the roof of the mouth. This produces electrical stimuation to the oral and pharyngeal afferent nervous system resulting in a reflex volley of efferent impulses to all residual salivary tissue, major and minor, in the oral and pharyngeal regions causing salivation.

Review of Available Literature

It has long been known that the nerves to salivary glands control the secretion of saliva. According to Garrett[19] an experiment in 1850 by Ludwig demonstraed that electrical stimulation of the chordalingual nerve in the dog caused a copious secretion of submandibular saliva.

In 1986 Weiss et al[7] reported on the use of an electronic stimulator as a mothod for increasing salivary production. In this prelimianry investigation, 9 of the 24 patients with a primary complaint of xerostomia had Sjogren's syndrome (diagnosed on the basis of mdical history only). Following a visual examination of the oral cavity as well as a gloved finger test to determine the presence of moisture (any reflection was considered a sign of wetness), patients were administered a 3-minute stimulus to the tongue and roof of the mouth with the probe (electrodes) of the hand-held stimulator. The maximum voltage delivered by the device is 6V with a current of 9 μA. Patient tolerance controls and determines the level of stimulation. Two subsequent stimulations of 3 minutes each were conducted at the same sitting by most of the patients (actual numbers not reported). Each stimulation procedure was followed by a subjective patient evaluation of improvement and a repeat clinical examination.

According to the investigators, prior to stimulation, seven of the nine patients with Sjogren's syndrome were considered to have slight amounts of moisture present, and the remaining two patients had "no moisture" present. Following stimulation, all nine patients reported subjective impressions of increased salivation as compared with prestimulation conditions. Clinical assessment was in agreement with the subjective patient evaluations. Weiss et al.[7] reported that the electronic device stimulates residual salivary tissue in the oral and pharyngeal regions, producing increased salivation.

In 1988, Steller et al.[3] conducted a study of electrical stimulation of salivary flow in patients with biopsy-proven Sjogren's syndrome. The response to an electrical stimulus applied to the tongue and hard palate was observed in a randomized, double-blind, 4-week study of 29 subjects with xerostomia secondary to Sjogren's syndrome. To be eligible to participate in the study, subjects had to have an unstimulated whole (total gland secretions) salivary flow rate of less than 0.2 g/min. Patients were randomly assigned to active or placebo devices, which they used for 3 minutes, three times a day for 4 weeks. Response to stimulation was assessed as whole saliva flow rates, which were measured at weeks 0, 2, and 4, both before and after stimulation with the device.

According to the investigators, there were no statistically significant differences between changes in prestimulation whole saliva flow rates or differences between the net changes in mean whole saliva flow rate (poststimulation minus prestimulation flow) of the active and placebo groups at each visit. The investigators did find the changes in mean poststimulation whole saliva flow rates between subjects using active and placebo devices from weeks 0 to 4 of the study to be statistically significant. However, analysis of the results showed that the mean increase in the poststimulation flow rate of the active device group (13 subjects) was due mainly to the responses of three subjects who showed marked increases in their whole saliva flow rates during the study. The investigators noted that the initial salivary flow rates of these subjects were the highest in that group, and their labial salivary gland focus scores were among the lowest.

The investigators concluded that some Sjogren's syndrome patients with residual salivary flow show significant responses to electrical stimulation, but others with low or absent whole saliva flow rates do not respond. During the 4-week study period no change in the appearance of the oral mucosa was observed at the site of electrode placement, and no marked changes or patterns of variation in subjects' pulse and blood pressure were observed before or after the device was used.

Discussion

Xerostomia is a complaint of elderly individuals, particularly women.[6] Decreases in both quantity of saliva as well as composition cause a multitude of problems. In a healthy mouth, copious saliva containing essential electrolytes, glycoproteins, and antimicrobial enzymes continually lubricates and protects the oral mucosa, thus cleaning the mouth, regulating acidity, maintaining the integrity of the teeth, and destroying bacteria.

Currently, xerostomia is managed on the basis of subjective symptoms, evidence of reduction in salivary flow, and complications that result from dry mouth. To alleviate some of the problems resulting from salivary dysfunction, pharmacologic sialagogues such as pilocarpine and pyridostigmine as well as sialagogues that include sugarless chewing gum, mints, or candy are prescribed in order to stimulate more salivary flow.[18]

Sialagogues are effective only if salivary gland function is present.

The preliminary investigation by Weiss et al.[7] in 1986 demonstrated that a probe providing electrical stimulation applied to the tongue and hard palate of patients with xerostomia presumed secondary of Sjogren's syndrome produces a salivary response. The salivary response was obtained in the nine patients following a single session of one to three electrical stimulations of 3 minutes each. As a preliminary investigation, this study did not include a control group or any quantitative assessment of salivary response, duration of response, or long-term assessment of efficacy. Moreover, seven of the nine patients tested exhibited residual saliva production prior to treatment and may have been exhibiting a tactile response to the probe.

The only other published report determining whether an electrical stimulus applied to the tongue and hard palate could stimulate salivary flow in subjects with xerostomia secondary to Sjogren's syndrome is the randomized, double-blind, 4-week study reported by Steller et al. in 1988.[3] The results of this short-term study indicate that some Sjogren's patients with residual salivary flow in an unstimulated state (<0.11–0.20 g/2 min) show a significant response to electrical stimulation, but others with low (less than 0.11 g/2 min) or absent whole saliva rates do not respond or respond to a clinically insignificant degree. Only 3 of 13 patients using the active device showed a significant response (about 0.6–1.0 g/2 min) in salivary production when compared with the responses of the placebo group. The whole saliva flow rates of the remaining 10 subjects in the active group remained below 0.25 g/2 min throughout the study and were not of the order of magnitude necessary to indicate a significant salivary response. Whole saliva flow rates of 10 subjects in the placebo group remained below 0.20 g/2 min throughout the study. It appears that additional studies with larger patient populations are needed to define specific degrees of salivary function or dysfunction that would respond to electrical stimulation. These studies could help to determine whether a single salivary response to electrostimulation or some other test such as lip biopsy focus score should be used to help identify those patients who may benefit from the technique.

Guidelines that would specify which types of Sjogren's patients with what degree of xerostomia and at what points in their clinical evaluation or management would benefit from electrostimulation cannot be developed without further clinical investigation. Long-term studies of well-characterized patient groups will also help to determine how long it takes to achieve a response. According to some investigators, this should allow sufficient time to determine if any regeneration of the salivary gland parenchyma is achieved. In order to determine the effectiveness of electrical stimulation of salivary flow in Sjogren's patients, studies should include information regarding concomitant therapy (continued frequent water sipping or use of other sialagogues) and the duration of the salivary response so that it can be compared with the use of other therapies. Studies and subsequent management of Sjogren's patients with dry mouth should include quantitative assessment of salivary function (unstimulated and stimulated, whole and individual gland salivas), assessment of oral conditions for signs of salivary hypofunction, and subjective patient evaluations.

Salivary glands in patients who suffer from rheumatoid diseases show varying degrees of destruction. This damage is progressive and considered irreversible by some investigators.[17] The ability to induce secretion in individuals with these conditions will be inversely related to the glandular damage. The study by Stellar et al[3] shows that a device providing electrical stimulation to treat dry mouth in patients with Sjogren's syndrome appears to be effective after 4 weeks of study in only a small percentage of patients. These patients may represent a group with less advanced disease (lesser degree of lymphocytic infiltration) and a greater amount of functional salivary parenchyma. These individuals would likely respond equally well to mechanical, chemical, tactile, and pharmacologic means of salivary stimulation. Anything that enhances mastication will induce secretion. So, too, will salts and citric acid solutions. While all of these techniques are effective, their effects are transient; however, there have been no studies to demonstrate that electrical stimulation provides any advantage or is more effective than other existing techniques.

Successful treatment for dry mouth is recorded as both subjective and objective increases in saliva output. According to Fox et al,[5] patient complaints of xerostomia or oral dryness may not reflect actual salivary gland capabilities or function. Subjective assessments alone are not adequate for diagnostic or therapeutic purposes. Although there is no fixed salivary level for intervention, xerostomia is generally associated with whole saliva flow rates of less than 0.1 mL/min. For some patients, a 50% reduction in salivary output leads to the subjective impression of dry mouth. However, the level of diminished salivary output where a patient becomes subject to increased risk of oral disease or dysfunction is not known. Moreover, there is a wide variability of "normal" salivary output. A 50% decline for one individual might still result in a flow rate greater than another individual's normal output. Some investigators feel that if the minor salivary glands can be stimulated to coat the mucosa with a thin layer of mucous, the sensation of dryness will be relieved. Even very small increases in saliva output may be beneficial in preventing or minimizing the oral effects of salivary dysfunction. Long-term clinical studies are needed to examine these issues.

Consultations.

According to the National Institutes of Health (NIH), electrostimulation may be useful in management of salivary hypofunction, but adequate data for definitive conclusions are not available. Electrostimulation is not widely accepted as an effective method of treating xerostomia secondary to Sjogren's syndrome. In addition, the number of published studies is limited.

NIH has informed OHTA that guidelines that specify which types of xerostomic patients with which conditions and at what points in their clinical evaluation and/or management would benefit from electrostimulation cannot be developed without further clinical studies utilizing well-characterized patient populations. Given the single published study showing that only patients with residual salivary flow in an unstimulated state will respond to electrostimulation, NIH suspects that those individuals would likely respond as well to other means of salivary stimulation, including gustatory or masticatory stimuli. NIH has expressed doubt as to whether electrostimulation using a limited stimulus time (3 minutes, three times a day) could provide sufficient duration of increased salivary output to have a significant impact on the oral health or symptoms of the patient.

The Food and Drug Administration (FDA) has informed OHTA that in May 1988 a manufacturer received premarket approval for a salivation electrostimulator device based upon submission [20] of engineering, preclinical, and clinical studies and the recommendation of the Dental Devices Panel, FDA's Center for Devices and Radiological Health. The short-term double-blind clinical study of the device was conducted at three institutions and included 40 patients using an active device and 37 patients assigned a placebo. The work by Steller et al[3] discussed in the literature review section is part of this submission. Based on the data submitted, the FDA found an increase in saliva production from the patient group using the active device compared with the patient group using the placebo device. Subjective improvement of a burning sensation of the tongue was noted by 12 of 22 patients treated with the active device, and an improvement in the ability to swallow was reported by 13 of these patients.

The manufacturer provided the FDA with a long-term clinical study of 34 patients with Sjogren's syndrome and xerostomia that was intended to follow patients for up to 12 months. Patients were assessed by the physician for moisture (oral examination) prior to the study and at visits on 1, 3, 6, and 12 months following stimulation. Eleven of 12 patients who completed 12 months of electrical stimulation were found on the last visit to have a discernible improvement in salivary status when compared with the initial assessment. As a followup to this study, a group of 23 patients was surveyed by the manufacturer via telephone to assess changes in quality of life after using electrical stimulation for 6–18 months. Patients indicated improvement that included increased ease of swallowing and improved dental checkups as well as education in burning tongue sensation, sleep interruptions, and water intake.

This device is indicated for use in patients with xerostomia secondary to Sjogren's syndrome and intended to stimulate salivary production from existing glandular tissue. Patients who show an initial response to electrostimulation are considered to be

candidates for this therapy. According to the FDA there are no contraindications associated with the use of this device.

Medical Specialty and Clinician Responses

Medical specialty groups such as The American Dental Association were unable to provide any information regarding the electrostimulation of salivary glands.

Comments from clinicians with knowledge of or experience with electrical stimulation of salivary production are equivocal. Some expressed the opinion that electrostimulation is a safe and effective method for the treatment of xerostomia secondary to Sjogren's syndrome. Others suggested that the method has been inadequately tested. Some clinicians recommended beginning electrical stimulation of the salivary glands in patients with Sjogren's syndrome and dry mouth early in the course of the disease in order to possibly prevent, modify, or even reverse the progression of a salivary gland atrophy. Other clinicians are not convinced that electrostimulation is more effective than other simple, less costly stimulation techniques such as gustatory stimulation or intraoral tactile stimulation.

Summary

Electrostimulation has been introduced as a technique for increasing salivary output in the treatment of patients with xerostomia (dry mouth) secondary to Sjogren's syndrome. The procedure uses an electrostimulation device (salivation electrostimulator) to increase salivary production from existing glandular tissue. The device delivers a low-voltage electrical stimulus to the mouth via a probe. Patients with residual salivary tissue in the oral and pharyngeal regions who demonstrate a decrease in the flow rate of saliva are potential candidates for this procedure.

It is estimated that more than one million people in the United States, predominantly middle-aged and elderly women, suffer from Sjogren's syndrome. Patients with chronic xerostomia complain of a continual feeling of oral dryness and have difficulty eating dry foods. These patients are susceptible to increased caries, oral pain, infection, and have difficulty speaking, chewing, and swallowing.

The approach to the treatment of xerostomia in Sjogren's patients is usually determined by the level of severity of the symptoms. Appropriate management of patients with xerostomia requires that those patients whose salivary flow can be increased by means of sialagogues be distinguished from those patients whose salivary flow is either unaffected or insufficiently stimulated. To alleviate some of the complications due to salivary dysfunction in those patients who respond to stimuli, pharmocologic sialagogues as well as sialagogues that include sugarless gums, mints and candies are prescribed in order to increase salivary flow.

Recently, electrostimulation via a hand-held stimulus probe has been introduced as a method of treatment in xerostomia secondary to Sjogren's syndrome. From the single published study as well as data provided to the FDA, it appears that an electrical stimulus applied to the tongue and hard palate (by a battery-operated device) may be useful in the management of salivary hypofunction in certain patients. It appears, however, that there are insufficient data at the present time to determine the clinical utility of electrostimulation, to evaluate the long-term clinical effectiveness of this modality of salivary production, or to identify those xerostomic patients who would benefit from this procedure. Also, electrostimulation is not widely accepted as an effective method of treatment for xerostomia secondary to Sjogren's syndrome. The number of published studies is limited and other less expensive treatments are available. Further research of electrical stimulation of salivary flow is required to determine its role in the treatment of Sjogren's patients with xerostomia.

References

1. Arthritis Medical Information Series: Sjogren's Syndrome. Atlanta: Arthritis Foundation, 1988.
2. Peterson JK. Xerostomia. Scand J. Rheumatol 1986;61(suppl):185—189.
3. Steller M, Chou L, Daniels TE. Electrical stimulation of salivary flow in patients with Sjogren's syndrome. J Dent Res. 1988;67(60):1334—1337.
4. Fox PC, Baum BJ, Mandel ID. Pilocarpine for the treatmnt of xerostomia associated with salivary gland dysfunction. Oral Surg 1986;61(3):243—248.
5. Fox PC, van der Ven PF, Sonies BC, et al. Xerostomia: Evaluation of a symptom with increasing significance. J Am Dent Assoc. 1985;110:519—525.
6. Rhodus NL. Xerostomia: An increasingly significant dental management challenge. Northwest Dentistry 1987;66(4):14–18.
7. Weiss WW, Brennan HS, Katz P, et al. Use of electronic stimulator for the treatment of dry mouth, J Oral Maxilo-fac Surg 1986;41:845—850.
8. Talal N. Sjogren's syndrome, in Wyngaarden JB, Smith LH (Eds): Cecil Textbook of Medicine (17th ed). Philadelphia: Saunders, 1985, pp. 1936—1937.
9. Whaley K, Alspaugh MA. Sjogren's syndome, in Kelly WN, Harris ED, Ruddy s, et al(Eds): Textbook of Rheumatology (vol 1). Philadelphia: Saunders, 1985, pp. 956—973.
10. Weerkamp AH, Wagner K, Vissinic A, et al. Effect of the application of a mucin-based saliva substitute on the oral microflora of xerostomic patients. Oral Pathol 1987;16(9):474—478.
11. Scully C. Sjogren's syndrome: Clinical and laboratory features, immunopathogenesis, and management. Oral surg 1986;62(5):510—523.
12. Fox PC, Busch KA, Baum BJ. Subjective reports of xerostomic and objective measures of salivary gland performance. J Am Dent Assoc 1987;115:581—584.
13. Talal N. Overview of Sjogren's syndrome. J Dent Res 1987;66(special issue): 672—674.
14. Vissink A, Johannes's-Gravenmade E, Panders AK, et al. Treatment of Hyposalivation. Ear Nose Throat J 1988;67:179—185.
15. Levine MJ, Aquirre A, Hatton MN, et al. Artificial salivas: Present and future. J Dent Res 1987;66:693—698.
16. Brastings ED. Saliva, xerostomia, and salivary substitutes. Pa Dent J 1987;54(5):23—24.
17. Duxbury AJH, Thakker NS, Wastell DG. A double-blind cross-over trial of a mucin-containing artificial saliva. Br Dent J 1989;166:115—120.
18. Vissink KA, Panders AK,'sGravenmade EJ, et al. Treatment of oral symptoms in Sjogren's syndrome. Scand J Rheumatol 1986;61(suppl):270—273.
19. Garrett JR. The proper role of nerves in salivary secretion: A review. J Dent Res 1987;66(2):387—397.
20. Food and Drug Administration. Summary of Safety and Effectiveness Data: Salivation Electro-Stimulation Device, (unpublished report), 1988.

[FR Doc. 94–12457 Filed 5–20–94; 8:45 am]

BILLING CODE 4121-01-P

Health Resources and Services Administration

Availability of Funds for Grants for the Public Housing Primary Care Program and for a Minority Community Health Coalition Demonstration Program Related to HIV/AIDS Centered Education and Prevention

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $8.7 million in discretionary grants for noncompeting continuation and competing grants for fiscal year (FY) 1994. The funds will be awarded under Section 340A of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 256a.

The purpose of these grants is to provide primary health services, as defined in section 330(b)(1) of the PHS Act, including health screenings, and health counseling and education services to residents of public housing.

In addition, approximately $500,000 will be available in FY 1994 for a demonstration effort co-sponsored by the Health Resources and Services Administration (HRSA) and the Office of Minority Health (OMH), located in the Office of the Assistant Secretary for Health. This activity will assist in implementing section 1707(d)(1) of the PHS Act and will enable public housing grantees to organize and operate Minority Community Health Coalitions (MCHC) and to implement HIV/AIDS

health education and prevention strategies.

The 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. This program announcement is related to the priority area of improving access to health services for minorities and disadvantaged Americans in underserved areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC, 20402–9325 (telephone 202–783–3238). The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

ADDRESSES: The PHS Regional Grants Management Officers (RGMO), whose names and addresses are provided in the appendix to this document, are responsible for distributing program application and guidance instructions (Form PHS 5161–1, revised 07/92, with revised face sheet HHS Form 424, as approved by the Office of Management and Budget under control number 0937–0189), and completed applications must be submitted to them. The RGMO can also provide assistance on business management issues.

DUE DATES: All applications are due to the appropriate RGMO June 22, 1994, except the Whittier Street Health Center of Roxbury, MA, whose due date is May 1, 1994, and was so notified directly. Applications will be considered to be "on time" if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Ms. Joan Holloway, Director, or Mr. James Gray, Chief, Health Care for the Homeless Branch, Division of Programs for Special Populations, Bureau of Primary Health Care, at 4350 East-West Highway, Bethesda, Maryland 20814 (telephone 301–594–4420 or 594–4430, respectively).

SUPPLEMENTARY INFORMATION:

I. Public Housing Primary Care Program

Approximately $8.7 million is available for awards. It is anticipated that the above funds will be awarded to support up to 7 noncompeting continuation grants ranging from $217,667 to $375,000, and up to 14 competing grants, ranging from $125,000 to $775,000 each for a project period of up to three years.

Eligible Entities

To be eligible, an applicant must be a public or nonprofit private entity and have the capacity to effectively administer this grant program. In an area where there are a certified Resident Management Corporation (RMC) and public or private nonprofit entities providing primary health services, including those receiving funds under sections 330 or 340 of the PHS Act, the organizations are encouraged to submit only one application demonstrating collaboration between the respective organizations.

Applicable Requirements

Grantees providing primary health services directly and organizations with whom grantees contract to provide primary health services must be participating and qualified providers under the Medicaid plan approved under Title XIX of the Social Security Act, and must maximize payment for services available from private insurance, Medicare, other Federal programs, and other third-party sources. Grantees entering into contracts for services may be granted a waiver of this requirement if the organization they contract with does not impose a charge or accept payment available from any third-party payor, including payment under any insurance policy or under any Federal or State health benefits program, including Medicaid.

The Secretary may not make a grant to an applicant unless the applicant signs an agreement indicating that, whether the services are provided directly or through contract, services under the grant will be provided without regard to ability to pay for the services. Further, if a charge is imposed, it will: (1) be made according to a schedule of charges that is made available to the public; (2) not be imposed on any resident of public housing with an income less than the official poverty level; and (3) be adjusted to reflect the income and resources of the resident.

For applicants which are public entities (e.g., State or local health departments or institutions of higher education) the Secretary may not award a grant unless the public entity agrees that, with respect to the costs to be incurred by such entity in carrying out the purposes of the grant, the entity will make available non-Federal contributions in cash toward such costs in an amount equal to $1.00 for each $1.00 of Federal funds. In-kind contributions will not constitute acceptable contributions. Also, funds provided by the Federal Government, or services assisted or subsidized by the Federal Government, may not be included in determining the amount of the non-Federal contributions.

Project Requirements

The following services are required by Section 340A and must be provided either directly or through contract:

(1) Primary health care services, as defined in section 330(b)(1) of the PHS Act, including health screening, and health counseling and education services for residents of public housing, on the premises of public housing projects or at other locations immediately accessible to residents of public housing;

(2) Referral of residents, as appropriate, to qualified facilities and practitioners for necessary field services;

(3) Outreach services to inform residents of the availability of such services (especially high risk women of child-bearing age); and

(4) Aid to residents in establishing eligibility for assistance under entitlement programs (e.g., Medicaid; Women, Infants and Children program; Aid to Families with Dependent Children) and in obtaining services, under Federal, State and local programs providing health services, mental health services, or social services.

In addition, applicants may also provide the following optional services:

(1) Training of public housing residents to provide health screening and educational services; and

(2) Health services to individuals who are not residents of public housing, if those services will be provided to such individuals under the same terms and conditions as such services are provided to the residents.

Restrictions on the Use of Grant Funds

The following restrictions apply to the use of grants funds:

(1) The applicant may not expend more than 10 percent of the Federal

grant funds for the purpose of administering the grant;

(2) Grant funds may not be used for inpatient services;

(3) Grants funds may not be used to make cash payments to intended recipients of primary health services, or health counseling and education services; and

(4) Grant funds may not be used to purchase or improve real property (other than minor remodeling of improvements to existing real property) or to purchase major medical equipment or motor vehicles.

Note: Upon request by the applicant, demonstrating that the purposes of the project cannot otherwise be carried out, the Secretary may waive the restriction in paragraph (4).

In selecting applicants for funding, preference is mandated by legislation and will be given to applicants that are: (1) Resident Management Corporations (RMC) as defined under Section 20 of the U.S. Housing Act of 1937; or (2) entities receiving funds under either Section 330 of the PHS Act (Community Health Centers) or Section 340 of the PHS Act (Health Care for the Homeless Programs).

Evaluation Criteria for Noncompeting Continuation Grants

Review of noncompeting continuation applications will be based on the following criteria:

(1) The grantee's progress in achieving stated program goals and objectives;

(2) The grantee's ability to resolve any outstanding issues raised during the review of its previous year's grant application;

(3) The adequacy of the grantee's proposed project plan;

(4) The grantee's history of compliance with reporting requirements; and

(5) The adequacy and appropriateness of the proposed budget.

Requirements for Competing Applicants

Compliance with the following statutory requirements will be reviewed:

(1) Demonstrated evidence that applicant has consulted with residents regarding the preparation of the grant application, ensuring that a process is in place for ongoing consultation with the residents regarding the planning and administration of the grant program;

(2) Demonstrated evidence of leadership and management structures necessary to ensure the efficient and effective delivery of health services to residents;

(3) Evidence of established or proposed procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant;

(4) Demonstrated capacity to establish and maintain an ongoing quality assurance management system with respect to the services provided under the grant;

(5) Evidence demonstrating the applicant's ability to ensure the confidentiality of records maintained on residents receiving services;

(6) Demonstrated capacity of applicant to develop and implement a reasonable plan to provide health services through individuals who are able to communicate in the language and cultural context of the target population or populations; and

(7) Assurances that the applicant will prepare and submit to the Secretary an annual report describing the utilization and costs of services provided under the grant, and other information as determined.

Evaluation Criteria for Competing Applicants

Each competing application will be evaluated on the following:

(1) Demonstrated evidence of the extent to which an ongoing process has been established to document needs of the target population, and to track changes in the demographic and health characteristics of the community to promote purposeful planning of services to be delivered;

(2) Demonstrated evidence that proposed services are consistent with the problems and concerns identified in the needs assessment, and sanctioned by the residents as being appropriate to meet the health needs of residents;

(3) Documented experience and evidence that the service delivery model is consistent with the proposed project plan, and is supported by the target public housing community;

(4) Documented evidence that the proposed project staffing plan fosters the delivery of planned services in a comprehensive and coordinated manner, and promotes continuity of care;

(5) Documented evidence that the outreach and referral strategies promote the continuity of care, increase access to services, and link residents to resources which meet a wide range of health and social service needs;

(6) Documented evidence of efforts to strengthen relationships with State Medicaid Agencies to enhance financing for primary care services;

(7) Evidence which supports the reasonableness of the proposed budget, and adequacy of the budget justification;

(8) Documented evidence of having successfully developed and implemented health services programs for residents of public housing, which must include examples of managing the delivery of health services to this population;

(9) Documented evidence of having successfully incorporated the residents of public housing in the development, implementation and management of the health services program; and

(10) Documented evidence of an effective working relationship with public housing resident organization(s) in the target public housing community.

II. Minority Community Health Coalition Demonstration Program Related to HIV/AIDS Centered Education and Prevention

Funding

Grant awards for the Minority Community Health Coalition (MCHC) program will be made for amounts up to approximately $100,000 each for approximately 5 new projects for up to 3 years. A special initiative exists between the Office of Minority Health (OMH) and the Bureau of Primary Health Care (BPHC) aimed specifically at the Section 340A Public Housing Primary Care (PHPC) grantees. Only those grantees or applicants approved for FY 1994 funding, who have not previously received OMH/MCHC funds, are eligible for MCHC grants. Proposals for this OMH supplemental program must be submitted as part of the application for the PHPC grant.

Project Requirements

Grantees will be required: To develop community health coalitions; to identify minority-targeted health education and prevention strategies; and to implement the strategies they have identified. These strategies will help eliminate or reduce the risk for acquiring or transmitting HIV, and other health problems that are acquired and/or transmitted or associated with similar risk behaviors. The categories must include tuberculosis (TB), substance abuse and sexually-transmitted diseases (STD), and hepatitis B. Although TB is not directly related to risk behaviors underlying HIV transmission, it is a serious health problem aggravated by HIV infection. It warrants special attention in HIV education/prevention information because of its high level of communicability.

Evaluation Criteria

Proposals for the demonstration program will be evaluated on the following:

(1) The relative need of the population to be served for the proposed HIV/AIDS centered education/prevention program;

(2) The adequacy of the proposed plan to assure the development and operation of an effective coalition, which should include involvement of the target population;

(3) The appropriateness of coordination and linkages with State and local health departments and other existing HIV-related activities such as the federally funded Ryan White Consortia;

(4) The appropriateness of the proposed staffing pattern;

(5) The adequacy of community commitment and coordination to develop the proposed coalition, including evidence of appropriate community participation and endorsement, and documentation of commitment, e.g., MOAs and MOUs;

(6) The reasonableness of the proposed budget and adequacy of the budget justification;

(7) The adequacy of the evaluation plan in measuring the coalition's effectiveness in a quantifiable fashion; and

(8) The extent to which the demonstration activity will be coordinated with the activities under the Public Housing Primary Health Care program.

Eligibility

Only those grantees or applicants approved for FY 1994 funding, who have not previously received OMH/MCHC funds, are eligible for MCHC grants.

Other Award Information

This program has been determined to be a program which is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit, to be made available under this notice, will contain a listing of States which have chosen to set up a review system and will provide a State point of contact (SPOC) in the State for that review. Applicants (other than Federally-recognized Indian tribal governments) should contact their 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. The due date for State process recommendations is 60 days after the appropriate application deadline date. The BPHC does not guarantee that it will accommodate or explain its response to State process recommendations received after the due date.

Public Health System Reporting Requirement

This program is subject to the Public Health System Reporting Requirement (reporting requirements have been approved by the Office of Management and Budget—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).

(2) A summary of the project (PHSIS), not to exceed one page, which provides:

a. A description of the population to be served;

b. A summary of the services to be provided; and

c. A description of the coordination planned with the appropriate State and local health agencies.

The Catalog of Federal Domestic Assistance number for this program is 93.927.

Dated: April 21, 1994.

John H. Kelso,

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 J. Bree, Grants Management Officer, PHS Regional Office III, 3535 Market St., 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 64106, (816) 426–5841

Region VIII: Susan Jaworowski, Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–4461

Region IX: Al Tevis, 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 26, 2201 Sixth Avenue, Seattle, WA 98121, (206) 616–2473

[FR Doc. 94–12550 Filed 5–20–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3773; FR–3721–N–01]

Submission of Proposed Information Collection to OMB Form Required for the Law Enforcement and Security Personnel Costs Information Collection

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments due date: June 22, 1994.

ADDRESSES: Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503; or Joan Campion, Rules Docket Clerk, Department of Housing and Urban Development (HUD), 451 7th Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development (HUD), 451 7th Street SW., room 4178, Washington, DC 20410 (202) 708– 0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of HUD has submitted to OMB, for expedited processing, an information collection package with respect to the forms and other information required for the Law Enforcement and Security Personnel Form. It also is requested that OMB complete its review within 30 days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

(1) *Title of the information collection proposal:* Law Enforcement and Security Personnel Costs Form.

(2) *Office of the agency to collect the information:* Office of the Assistant Secretary for Public and Indian Housing.

(3) *Description of the need for the information and its proposed use:* The data that will be collected on the forms are necessary for HUD to quantify current and future financial commitments by the Department to increased law enforcement personnel in local communities as requested by the Office of Domestic Policy at the White House.

(4) *Agency form numbers:* HUD Form 52355.

(5) *Members of the public who will be affected by the proposal:* Public and Indian housing authorities.

(6) *How frequently information submissions will be required:* Annually.

(7) *An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response and hours of response:* See attached chart with a total of 48,000 burden hours.

(8) *Type of request:* New.

(9) *The names and telephone numbers of an agency official familiar with the proposal:* Julie B. Fagan, Office of Public and Indian Housing, (202) 708–1197.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C.; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 2, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Housing Authority Law Enforcement and Security Personnel Costs

Office: Office of Resident Initiatives

Description of The Need For The Information and Its Proposed Use: This information collection is required in connection with Public Housing Drug Elimination Program (PHDEP), and other public housing funding which funds law enforcement and security personnel in public housing. Information from this form will allow the Department to measure current funding levels supporting law enforcement and security personnel and to report those measurements to the Office of Domestic Policy at the White House.

Form Number: HUD Form 52355

Respondents: Public Housing Authorities and Indian Housing Authorities

Reporting Burden:

	Number of respondents	Frequency of responses	Hours per responses	=	Burden Hours
Initial reporting	1200	1	24		28,800
Annual reporting	1200	1	8		9,600
Initial record-keeping	0	0	0		0
Annual record-keeping	1200	1	8		9,600
Total annual burden	1200	1	40		48,000

Status: New Collection

Contact: Julie B. Fagan, (202) 708–1197.

Date:

May 2, 1994.

Part A: Justification

President Clinton has pledged an additional 100,000 police officers by 1998. The Department of Housing and Urban Development (HUD) has been directed by the White House Domestic Policy Council (DPC) and the Office of Management and Budget (OMB) to assist in fulfilling that pledge by providing for 4,100 police-equivalent positions in 1994 and 5,000 position per year between 1995–1998 (see Attachment One).

The primary HUD programs that permit the funding of law enforcement and security officers are the Public Housing Drug Elimination Grant (PHDEP), Community Development Block Grant, Comprehensive Improvement Assistance Program (CIAP), Comprehensive Grants (Comp Grant), and operating subsidies. From those programs, HUD is expected to provide the positions outlined above. OMB assumes that HUD will use $124 million in budget authority in FY 1994 and $150 million for FYs 1995–1998 to fund these positions.

A1.0 Circumstances That Make Collection Of The Information Necessary

The Office of Public and Indian Housing (PIH) administers four of the five programs identified above. The programs fund the activities of only public and Indian housing authorities (HAs). PIH does not currently have the mechanisms to measure or determine the costs or specific number of law enforcement and security personnel our grant monies are supporting.

The Public Housing Drug Elimination Program (PHDEP) funds a variety of public housing anti-drug efforts, including the hiring of law enforcement and security officers. Since program inception in 1989 the PHDEP has funded 1762 grants totalling $532,459,075 million. According to the plans of the FY 1991 to FY 1993 grantees, approximately $178 million of the funds were targeted to additional security or law enforcement staff. Over the same period, the proportion of total dollars targeted specifically to additional law enforcement and security costs has remained about the same each year.

While PHDEP grantees are required to submit semi-annual reports on the

status of grant activities and funding, the level of detail varies greatly, and the information is only reviewed on a grant by grant basis, and is not collected or concatenated on a field office, regional office or national basis. Information from PHDEP semi-annual reports are insufficient sources because the reports are not standardized and several other PIH funding sources pay for police/security costs.

In FY 1993, CIAP grants totalled $326 million, and are currently being phased out. The reports required from CIAP grantees report "anti-drug costs", but do not include anti-crime costs, and do not separate labor from other related costs.

In FY 1993, Comp Grants totalled $2.5 billion. The Comp Grant program allows costs for "health and safety", but none of the Comp Grant reports capture any information on security and law enforcement personnel costs.

Public Housing Operating Subsidy (O/S) can also be used to pay for "Protective Services", including labor, materials, and contract costs. In FY 1992, nationwide, $108.2 million were spent on all protective services costs. Of those funds, $71.9 were spent on labor, and $32.7 on security contract costs. Since FY 1987, the dollars spent on labor costs by all housing authorities has increased by 44 percent from $49.8 to $71.9 million, while the dollars spend on security contract costs has increased by 42 percent from $76.1 million to $108.2 million. HUD does not collect information at any level of greater detail.

The Law Enforcement/Security Form for which OMB approval is sought would be required from HAs annually. Use of this form will enable the level of law enforcement and security support to be shown in a consistent manner, through annual compilation of the requested data. The planned characteristics of the form are for reporting at the agency level. HAs will report on the funds and positions relative to the relevant grants they are operating.

A2.0 How and by Whom the Data Will be Used

A2.1 Purpose of the Data Collection

The Department will use this information for several purposes. Primarily the data will be used to report to the Secretary, and in turn to the Domestic Policy Council of the White House, HUD's contribution to the Administration's effort to increase the number of law enforcement officers by 100,000 by 1998.

The Department will also analyze the information to better understand the contribution of public housing funds to local law enforcement efforts. A recent HUD technical assistance contract addressing the issues of law enforcement and public housing show an increasing financial commitment by HAs to pay for law enforcement and security services.

Two major policy issues are raised by these HUD funds paying for security and law enforcement personnel: comparable level of law enforcement services provided by local government, and liability. Many of the financial commitments by HAs show evidence of public housing communities which do not receive a comparable level of law enforcement services from local government, as required by the Annual Contributions Contract (ACC), or HAs paying additional costs disproportionate to the additional services received. HAs compensate for the lower level of services by paying for additional officers or security. HUD is interested in understanding this issue, and assisting HAs to negotiate for the required comparable level of services, and for any additional services.

Liability has also been raised as a major policy issue. If HUD grantees are using HUD funds to pay for law enforcement and security personnel, it could be incumbent upon the Department to ensure that all legal and insurance matters are adequately addressed by grantees before financial and contractual commitments are made for law enforcement and security services. Without any knowledge of the extent of those commitments, and which HAs are making those commitments, HUD cannot develop an adequate response for technical assistance and training.

As HUD funds are increasingly targeted to law enforcement and security costs, the Department needs to understand and develop appropriate policies to assist HAs in the development of safe and secure environments. Without an understanding of current commitments and their shifts from year to year, the Department will not be able to develop effective program or technical assistance responses to HAs with inadequate law enforcement an security coverage.

A2.2 Consequences If the Information Was Not Collected

If the Department were not to collect this information it would be considered unresponsive to the President's request, it would continue to lack the necessary information to understand the nature and extent of potential liability and to assist housing authorities in negotiating for a comparable level of local government law enforcement services.

A3.0 Use of Improved Information Technologies

The required information can be submitted to HUD Headquarters in two formats. The first will be a bulletin board format with direct on-land access from HAs to HUD Headquarters. The bulletin board format will be the same as the hard copy form seen in Attachment 2. The second and alternative format will be a one-page hard copy form as attached in Attachment 2. The form will be machine-readable and will be submitted directly to the Office of Public and Indian Housing at HUD Headquarters in Washington, D.C. where the form will be scanned electronically and the information stored in a database for future use.

A4.0 Efforts to Identify Duplication

The Department has examined existing data sources, such as the grant applications and semi-annual reports for public housing competitive programs including PHDEP, CIAP, and Comp Grant, as well as Operating Subsidy reports. The required data are not consistently available in any of these sources because none require the reporting of law enforcement and security expenditures specifically (see A1.0 above).

In the pretest conducted by the Office of Public and Indian Housing with nine housing authorities, most respondents indicated that housing authorities have the necessary information, but do not keep the information in a central location.

A5.0 Why Similar Already Available Data Cannot Be Used

As discussed in Section A1.0 above, similar, already available data does not exist. Current HUD-required reports from HAs do not capture security and law enforcement personnel information as required by the department.

A6.0 Effort to Minimize the Burden for Small Entities

The set of indicators in the form represents funding sources and budgets most commonly used by housing authorities, including small housing authorities. Review of the drug elimination grants (DEGs) by the Office of Public and Indian Housing shows that smaller housing authorities with DEGs are just as likely to have DEG funds targeted to law enforcement or security costs. The likelihood of smaller housing authorities using other HUD grant fund to support law enforcement

or security costs is unknown because of the lack of information as outlined in Section A1.0.

A7.0 Consequences of Less Frequent Data Collection

Because the Domestic Policy Council has asked the Department to report on its annual contribution to the President's pledge of 100,000 more law enforcement officers, annual reporting should be sufficient, and less frequent reporting would not allow the Department to report as required.

A8.0 Circumstances Requiring Deviation From Guidelines In 5 CFR 1310.6

The proposed monitoring system is consistent with the guidelines set forth in 5 CFR 1310.6 (Controlling Paperwork Burdens on the Public—General Information Collection Guidelines). There are not circumstances that require deviation from these guidelines.

A9.0 Consultations Outside of the Agency

To aid in the preparation of the PHDEP Outcome Monitoring System, the Department has conferred with Carroll Buracker of Fredericksburg, VA, leading authority in law enforcement services. Mr. Buracker provided valuable comments in the definition of different types of security and law enforcement officers more suitable for public housing authorities, and those changes have been incorporated into the document. The Department has also conferred with several public housing authorities, receiving suggestions for clearer instructions and use of terms including definitions of FTE, time frames, and local government. These have been incorporated into the document, and will be incorporated into the instructions.

A10.0 Arrangements and Assurances Regarding Confidentiality

The Department will develop a HUD Notice to accompany the form explaining that the information reported will be used by HUD to measure HUD support of national law enforcement and security personnel costs.

A11.0 Sensitive Questions

No questions of a sensitive nature are included in the proposed report.

A12.0 Estimated Costs to the Federal Government

Staff of the Department of Housing and Urban Development developed the form and will collect and concatenate the data. There will be no additional contractual cost to the government.

A13.0 Respondent Burden

All public and Indian housing authorities which expend HUD funds on law enforcement or security staff will be required to collect the data and submit the report annually. Currently HUD does not anticipate more than 1200 HAs to have to complete more than the first part of the form. The initial set-up or modification of one housing agency's data collection system is estimated to take three working days (24 hours). Once the collection system is in place, the annual burden for one grantee, including time to prepare data and complete the form is 8 hours. The total annual burden program-wide will vary based on the number of housing authorities which use HUD funds to pay for law enforcement or security staff, which is not anticipated to be more than 1200 HAs.

Name of Reporting Form: Public Housing Law Enforcement/Security Form

Respondent: All public and Indian housing authorities

Number of Respondents: 3300

Estimated Time in Hours: Initial set up: 24 hours; subsequent reporting 8 hours/year.

Frequency in Reporting: Annual.

Annual Burden (In Hours): For 1200 housing authorities, 28,800 hours for initial setup plus 9,600 hours/year for subsequent reporting.

Note: The reporting requirements for small housing agencies (under 1,250 units) are somewhat less, as they are less likely to have used more than one HUD funding source to pay for law enforcement and security activities.

A14.0 Reasons For Change In Burden

This is a new reporting form and therefore this section is not applicable.

A15.0 Tabulation Plans, Statistical Analysis, Study Schedule and Publication

The concatenation and analysis of the results is intended for use by the program staff at the Department to monitor shifts.

The concatenation and analysis of the results is intended for use by the program staff at the Department to monitor shifts in the use of funds and to report to Congress and the White House. As part of ongoing program monitoring, the data gathered may be tabulated and used periodically to assess the overall effectiveness of HUD funds in national efforts at increased law enforcement. Currently, there are no plans for such a formal assessment based on this report.

PART B. Sampling and Response

The Public Housing Law Enforcement and Security Form (PHLESF) is designed to collect information from the universe of public and Indian housing authorities. No sampling will be done.

Attachment 1: Memo Outlining 100,000 Officers

Attachment 2: Public Housing Law Enforcement and Security Form

BILLING CODE 4120–33–M

DRAFT

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0000 (exp. MM/DD/YY)

Housing Authority Costs for
Law Enforcement & Security Personnel

Public reporting burden for this collection of information is estimated to average 40 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 this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0000), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Name of Housing Authority:

Housing Authority Code	12 Month Period Ending	Funding Source (see note 1)	Total Dollar Amount	Total FTE's (see note 2)	Sworn Police Officers Municipal (see note 3)		Sworn Police Officers Housing Authority (see note 4)		Overtime Police Officers Municipal & HA (see note 5)		Security Guards Housing Authority (see note 6)		Security Guards Contract (see note 7)		Other (see note 8: Specify)	
					$ Amount	FTEs	$ Amount	FTEs	$ Amount	FTEs	$ Amount	FTEs	$ Amount	FTEs	$ Amount	FTEs
		COMP GRANT														
		CIAP														
		PHDEP														
		COMPAC														
		OB/OS														
		OTHER														
		LOCAL GOV'T.														

Instructions:

1. All HAs must complete and return this form; the figures must reflect the most recent 12 month period ending at the most recent quarter.
2. HAs with no financial commitments of both HA or local government funds should complete Columns 1 to 3 and leave the remainder of the form blank.
3. Column 5 "Total Dollar Amount" reflects the dollar amount of that funding source to the law enforcement or security personnel.
4. Entries on the form must be typed and must not overlap column or row lines.
5. Dollar amounts must be whole dollars only without the comma.
6. Full Time Equivalent (FTE) positions that do not include a fraction may be shown with or without the decimal space.
7. "Other" should include URD, or other public housing funds used for these purposes.
8. "Local Government " dollars and FTEs should be completed only for staff paid for with local government funds and dedicated solely to public housing.

Notes:

1. Local Government funds include all city, county, or State resources used by the housing authority.
2. One Full Time Equivalent (FTE) position is equal to 8 hours of labor.
3. Sworn police officers provided through a contract with a local law enforcement agency.
4. Sworn police officers and staff of the housing authority.
5. Off-duty or overtime officers under personal contract services.
6. Security guards and staff of the housing authority.
7. Security guards through a contract with the housing authority.
8. Any other security-related positions; specify below what type of position.

form HUD-52355 (2/22/94)
ref Handbook XXXX

[FR Doc. 94–12518 Filed 5–20–94; 8:45 am]
BILLING CODE 4210–33–C

Office of Administration

[Docket No. N–94–3776]

Notices of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 12, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Report Prohibited Actions by FHA Mortgagees.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Section 539(a)(2) of the National Housing Act mandates that the Secretary of HUD establish a procedure under which any person may file a request that HUD determine whether a mortgagee is engaged in certain prohibited activities.

Form Number: None.

Respondents: Individuals or households.

Frequency of Submission: On occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	100		1		1		100

Total Estimated Burden Hours: 100.

Status: Extension, no changes.

Contact: Roger G. Henderson, HUD, (202) 708–1824; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 12, 1994.

Proposal: Application for Funding under the Notice of Funding Availability (NOFA) for Service Coordinators for the HOPE for Elderly Independence Program (FR–3636).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: HUD requires an application to determine the amount of funds that each housing agency requires for an elderly service coordinator and to obtain supporting documentation that justifies the cost. Funds will be awarded on the basis of these applications.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	28		1		5		140

Total Estimated Burden Hours: 140.

Status: New.

Contact: Susan Loritz, HUD, (202) 708–0477; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 12, 1994.

Proposal: Section 8 Certificates and Vouchers—Proposed Rule (FR–3385).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Section 8 Homeownership Option for the Certificate and Voucher Programs allows public housing agencies to assist families that are first-time homebuyers in meeting monthly homeownership expenses under a FHA-insured or non-FHA insured mortgage.

Form Number: None.

Respondents: Individuals or households and State or Local Governments.

Frequency of Submission: Recordkeeping and on occasion.

Reporting Burden:

	No. of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	20,500		2.2073		.11524		5,215
Recordkeeping	2,500		1		.25		625

Total Estimated Burden Hours: 5,840.
Status: New.
Contact: Michael Dennis, HUD, (202) 708–3887; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 12, 1994.

[FR Doc. 94–12519 Filed 5–20–94; 8:45 am]
BILLING CODE 4210–10–M

[Docket No. N–94–3775]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 22, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 2, 1994.

John T. Murphy,
Director, IRM Policy and Management Division.

Proposal: Insurance of Adjustable Rate Mortgages.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This information is part of a disclosure statement lenders must furnish to borrowers to state that the interest rate on the mortgage may change, to identify the index used and the frequency of adjustments, and to provide a hypothetical payment schedule showing increases over the first five years.
Form Number: None.
Respondents: Businesses or other for-profit.
Frequency of Submission: On occasion.
Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	20,000		1		.07		1,400

Total Estimated Burden Hours: 1,400.
Status: Extension, no changes.
Contact: Sandy Krems, HUD, (202) 708–4979; Jospeh F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 2, 1994.

[FR Doc. 94–12520 Filed 5–20–94; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–94–3774]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment due date: June 22, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0050. (This is not a toll-free number.) Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently

information submissions will be required; (7) an estimate of the total number of hours need to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 2, 1994.

David Christy,

Acting Director, IRM Policy and Management Division.

Proposal: Application for Mortgage Insurance.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information collection is authorized by Sections 213, 221, and 234 of the National Housing Act. The information collection is submitted by project sponsors seeking feasibility determination and by mortgagees applying for a conditional or firm commitment for mortgage insurance.

Form Number: HUD–93201.

Respondents: Businesses or other for-project and non-profit institutions.

Frequency of Submission: Recordkeeping and on occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93201	15		1		4		61
Recordkeeping	15		1		2		30

Total Estimated Burden Hours: 91.

Status: Reinstatement, no changes.

Contact: Shirley L. Machonis, HUD (202) 708–2556; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 2, 1994.

[FR Doc. 94–12521 Filed 5–20–94; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–017–94–4210–05; COC–55577]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Rio Blanco County, Colorado, have been examined and found suitable for classification for conveyance to Rio Blanco County under the provisions of the Recreation and Public Purposes Act (43 U.S.C. 869 *et seq.*), as amended by the Recreation and Public Purposes Amendment Act of 1988. Rio Blanco County proposes to use the lands for a solid waste landfill.

Sixth Principal Meridian, Colorado

T. 2N., T. 97 W.,

Sec. 25, NW¼, N½NE¼SW¼, NE¼NW¼SW¼;

Sec. 26, E½E½NE¼.

Containing 230 acres.

All minerals, excluding the oil and gas, will be conveyed concurrently with the surface estate, pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)).

The lands are not needed for federal purposes. Conveyance is consistent with current BLM land use planning, and would be in the public interest. The patent, when issued, will be subject to the following terms, conditions, and/or reservations:

1. Provisions of the Recreation and Public Purposes Act, the Recreation and Public Purposes Amendment Act, and all applicable regulations of the Secretary of the Interior.

2. A right-of-way reservation for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. Rio Blanco County, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from the above described lands, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, (2) the sole fault, failure, or negligence of the United States.

4. Compliance with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances.

5. Title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

6. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

7. Oil and gas shall be reserved to the United States, together with the right to prospect for and remove the same.

8. A reservation of title to all archaeological and paleontological resources within the above described property, together with such right of ingress and egress, and temporary occupancy as is necessary to identify, inventory, monitor, preserve, protect, mitigate, and remove any of said resources within or from the described property. No construction or other intentional surface disturbance, except emergency response, may take place on lands where identified archaeologic or paleologic sites have been identified without prior written authorization from the United States. The United States may release any or all of the described property from this reservation at any time that it determines, in consultation with the State Historic Preservation Officer, that the property being released

is no longer eligible for listing on the National Register of Historic Places or does not contain significant archaeological or paleological resources.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, White River Resource Area, 73544 Highway 64, Meeker, Colorado.

Upon Publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, conveyance under section 209(b) of the Federal Land Policy and Management Act, and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Craig District Office, 455 Emerson Street, Craig Colorado 81625.

Classification Comments: Interested parties may submit comments involving the suitability of the land for solid waste landfill purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a solid waste landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Vern Rholl, Supervisory Realty Specialist, or B. Curtis Smith, Area Manager, White River Resource Area, P.O. Box 928, Meeker, Colorado 81641, (303) 878–3601.

Dated: May 11, 1994.

Robert Schneider,

Associate District Manager.

[FR Doc. 94–12545 Filed 5–20–94; 8:45 am]

BILLING CODE 4310–JB–M

[UT–943–4730–04–269Z]

Filing of Plat of Survey

AGENCY: Bureau of Land Management, Utah.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land have been filed in the Utah State Office, Salt Lake City, Utah:

Group	Tp.	Rge.	Meridian	Approved	Type
0774	35 S.	06 W.	SLM	04/06/94	Dep. Resurvey.
0811	07 S.	04 E.	SLM	01/24/94	Dep. Resurvey.
Supplemental Plats:					
S0618G	07 S.	04 E.	SLM	02/01/94	Supplemental.
S1565B	34 S.	04 E.	SLM	02/01/94	Supplemental.

G. William Lamb,

Associate State Director.

[FR Doc. 94–12455 Filed 5–20–94; 8:45 am]

BILLING CODE 4310–DQ–M

Geological Survey

Interagency Advisory Committee on Water Data; Intergovernmental Task Force on Monitoring Water Quality

AGENCY: U.S. Geological Survey, U.S. Department of the Interior.

ACTION: Notice of an open meeting of the Intergovernmental Task Force of Monitoring Water Quality (ITFM) in Reston, Virginia, and of the availability for public review and comment of the second ITFM report on water-quality monitoring.

SUMMARY: Notice is hereby given of a meeting of the ITFM. This meeting is open to the public.

DATES: The meeting will convene at 8:30 a.m. on Wednesday, June 15, 1994.

ADDRESSES: Sheraton Reston Hotel; 11810 Sunrise Valley Drive; Reston, Virginia 22091. Telephone: (703) 620–9000.

FOR FURTHER INFORMATION CONTACT: Nancy Lopez, Chief, Office of Water Data Coordination; 417 National Center; Reston, Virginia 22092; Telephone: (703) 648–5014; Fax: (703) 648–6802.

SUPPLEMENTARY INFORMATION: The agenda includes presentations by representatives of industrial and manufacturing organizations that monitor water quality for compliance and other purposes. These participants will provide information to the ITFM about their water-quality monitoring activities and requirements. The information will include relationships to other water-quality-monitoring efforts and decisionmaking. The discussions will include comments on two reports by the ITFM. The first report is titled "Ambient Water Quality Monitoring in the United States: First Year Review, Evaluation and Recommendations," and the Federal Register dated April 29, 1993, announced its availability for public review and comment. The most recent report is titled "Water Quality Monitoring in the United States," and it is available for public review and comment through July 31, 1994. Copies of the second report can be obtained from the Office of Water Data Coordination by telephone (703) 648–5023, or by writing Ms. Lopez at the address shown in the section immediately above. The June meeting is intended to facilitate outreach to members of the private sector that are interested in water-quality monitoring and the recommendations of the ITFM. At the end of the day, some time will be available for public comments, and individual speakers may have up to 5 minutes. Those wishing to be placed on the agenda must provide a written request with a description of the general subject area to Ms. Lopez by noon May 27, 1994. Any member of the public may submit written information and/or comments on the report to her at the above address for distribution to the ITFM.

John N. Fischer,

Acting Chief Hydrologist.

[FR Doc. 94–12546 Filed 5–20–94; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

General Management Plan; Haleakala 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 General Management Plan for Haleakala National Park, Maui County, Hawaii.

The proposed action would add adjacent lands to the park containing significant natural and cultural resources to permit visitor access and to ensure the long term protection of park resources. The proposal also includes needed improvements to visitor services to be carried out through the development of a limited amount of new facilities and the upgrading of existing facilities. Research programs are also called for in the proposal to refine and supplement the existing resource data base.

Two alternative plans are being considered. One is a no action alternative which calls for a continuation of current operations with no upgrading or development of park infrastructure. The other is a minimum requirements alternative which calls for the same level of facility upgrading and development as the proposal, but adds substantially less land.

SUPPLEMENTARY INFORMATION: Written comments on the draft general management plan and DEIS will be accepted until July 30, 1994. Public meetings on the draft plan will be scheduled at different locations on the Island of Maui, including Kahului and Hana, during the month of June. The times, dates, and specific locations of these meetings will be announced in local newspapers several weeks in advance. Park Service officials will be available at the meetings to present the plan, receive oral and written comments, and answer questions.

Inquiries on the draft general management plan and DEIS should be directed to the Superintendent, Haleakala National Park, P.O. Box 369, Makawao, Maui, Hawaii 96768. The park telephone number is (808) 572–9306. Copies of the draft Plan and DEIS are available at the park headquarters at the above address. Copies are also available for inspection at public libraries on Maui, at the State Library in Honolulu, and at the Western Regional Office, National Park Service, 600 Harrison St., suite 600, San Francisco, CA 94107–1372.

Date: May 3, 1994.

Stanley J. Albright,

Regional Director, Western Region

[FR Doc. 94–12454 Filed 5–20–94; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–1 (Sub-No. 253X)]

Chicago and North Western Transportation Company—Abandonment Exemption—In Monroe County, IA

Chicago and North Western Transportation Company (CNW) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 1.5 miles of rail line between the old Burlington Northern crossing at Maxon (previously designated as old railroad milepost 323.1) and the former Norfolk Southern connection at Albia (previously designated as old railroad milepost 324.6), in Monroe County, IA.

CNW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental), 49 CFR 1105.8 (historic requirement), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 22, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29[3] must be filed by June 2, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 13, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Thomas F. Flanagan, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CNW has filed an environmental report which addresses the effects of the abandonment's effect, if any, on the environment or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 27, 1994. Interested persons may obtain a copy of the EA from SEA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–12517 Filed 5–20–94; 8:45 am]

BILLING CODE 7035–01–P

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Technical Assistance for Job Training Model Replication

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of technical assistance.

SUMMARY: The Department of Labor (DOL) is announcing the availability of non-monetary technical assistance to Job Training Partnership Act (JTPA) service providers. The Center for Employment Training (CET) is being funded by DOL to provide such technical assistance to replicate the CET Job Training Model. Up to 7 service providers will receive assistance in developing and implementing the CET Job Training Model for use within the JTPA system. All interested parties must participate in an information seminar prior to selection.

DATES: The training will run from August through December 31, 1994. An information seminar will be held at CET's headquarters in San Jose, California, on June 29 through July 1, 1994. All interested service providers must: (1) Contact CET to arrange to attend the information seminar scheduled (or make alternative informal arrangements) if the organization has not previously attended one, and by July 15, the organization must submit in writing to the Department of Labor at the address below, the organization's intent to apply for this technical assistance award; (2) if the organization has previously attended a CET information seminar, it need not attend another information seminar, but, by July 15, the organization must submit in writing to the Department of Labor at the address below the organization's intent to apply for this technical assistance award; and (3) by July 19, to apply for the technical assistance, the organization must submit an original and four copies of a brief, but thorough, application to the Department of Labor at the address below, discussing the criteria as required below. Packages shall be postmarked by the dates established above.

ADDRESSES: Notices of intent to attend an information seminar and to apply for this technical assistance award shall be mailed by certified mail, return receipt requested, to Lisa Stuart, Department of Labor, 200 Constitution Avenue, NW., room N–4666, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Stuart or James Aaron, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., room N–4666, Washington, DC 20210. The telephone number is (202) 219–6825. This is not a toll-free number.

Max Martinez, CET Replication Project Training Director, Center for Employment Training, 701 Vine Street, San Jose, CA 95110. The telephone number is (408) 287–7924. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Center for Employment Training (CET) offers a unique training program which challenges standard notions of training the disadvantaged. It is a holistic approach to train the hardest-to-serve through an integrated program of contextual learning. CET focuses on job training, but combines basic education and related services in context with this core training. This method of learning was endorsed by the Secretary's Commission on Achieving Necessary Skills. Further, CET's program is unique in that it is accessible to all, with no entry tests or creaming. This represents the direction of the 1992 JTPA amendments, which stress targeting of services to those most in need and intensifying and improving the quality of services offered. The CET design, as implemented through this replication, will reflect the key provisions of the new program design such as assessment and individual service strategy. In addition, CET is widely recognized as one of the most effective job training programs in the country. CET's program serving minority single mothers was credited with the most positive outcomes in a comprehensive study funded by the Rockefeller Foundation. Additionally, recent research with school dropouts, in the JOBSTART study conducted by Manpower Demonstration Research Corporation (MDRC), also came up with strong positive impacts and provides growing evidence of the effectiveness of CET's program.

Technical assistance will be provided to up to 7 sites to replicate the CET job training model. This technical assistance award will provide for the training and technical assistance for local entities which are selected to operate the CET model program. This award is made as a modification to an existing DOL–CET agreement that presently provides for training and technical assistance to 10 sites. Technical assistance is being provided to develop a CET-model base within the JTPA system that could provide for: A technical assistance capacity within the JTPA system; opportunity to uncover obstacles in implementing CET-model programs under JTPA; and the opportunity to delineate aspects of the model which provide the greatest benefit to JTPA participants.

Selected organizations would enter into agreements with the Center for Employment Training to receive the technical assistance required for the development and start-up of the local CET model program. This is a non-monetary award. The technical assistance award includes the local and CET on-site training to enable an organization to start its own CET model program. Training would be provided during the months of August through December. The award covers the cost of CET's services and most traveling that will be required of CET and of the service providers. However, start-up costs, including site development and preliminary staffing, will be the responsibility of the selected service providers. Operation costs of the model program also are not included and are expected to come from the organizations' regular JTPA and other funding. Additional resources may be necessary and may be obtainable from local foundations. CET will assist selected sites in finding additional funding sources, if necessary.

This award is to provide services to the JTPA community. Eligible applicants are limited to service delivery area (SDA) administrative entities who run their own training programs, consortiums of service providers, not-for-profit organizations, community-based organizations as defined under Section 4 of JTPA and local education organizations. Two types of applications will be accepted: (1) Applications from SDA administrative entities, and (2) joint applications with one party being the SDA administrative entity and the other being an organization listed above. Applications that do not include the local SDA administrative entity will not be accepted. This process is to ensure that all service providers have coordinated with their JTPA funding stream and that the SDA administrative entity has committed to funding the program the service provider is being trained to operate.

Information Seminar

JTPA service providers that are interested in receiving such technical assistance to develop and start operations on their own CET model job training program must, as stated above, contact CET at the address listed above, to arrange attendance at the information seminar. Attendance at the information

seminar is restricted to those individuals who have the capacity to make decisions of participation for their organizations. Although for the 7 selected organizations most funds required for future travel to CET's headquarters in San Jose are provided for in the CET and DOL agreement, the initial costs to attend the information seminars are not covered. CET will assist in making these travel arrangements; however, all costs are the responsibility of the individual service providers.

Application Process

Selection of service providers will be based upon criteria in three categories: Eligibility, competitiveness, and additional factors discussed above. In order to be considered, an applicant must meet each of the criteria under the eligibility section. The information received under the competitive issues section will be used to rank applications. After all applications are ranked, the additional factors discussed below will be used to select a diverse group of sites.

I. Eligibility

(1) All entities must be or become JTPA service providers. All providers that are not JTPA administrative entities must submit their applications jointly with the SDA administrative entity. This joint application with the service delivery area administrative entity should show that the service provider is or will be receiving JTPA funds during Program Year 1994, (July 1, 1994 through June 30, 1995). The application should elaborate on the relationship between the service provider and the administrative entity. This should include descriptions of previous services, previous and current JTPA funding levels, and discuss the level of cooperation between the provider and the administrative entity. Further, any local procurement procedures, including those for a noncompetitive award, if applicable, that will be required to be met for starting and completing this project should be detailed in the application. A timeline for the procurement process should be provided. Applicants must be able to show that there is funding available to the proposed service provider. Given the short time frame for the technical assistance (August through December), procurement activities should be initiated as soon as possible. To simplify and speed up the procurement process, it is suggested that SDA administrative entities, that do not wish to run their own program, consider modifying a current service provider's existing agreement to convert their present training program to the CET model.

(2) All entities must state that they are willing to participate in evaluation studies and to fully implement the core CEP job training model.

II. Competitiveness

Applications will be judged equally based upon (1) the organization's level of commitment to the replication project, and (2) the apparent capacity of the organization to succeed with the replication. Measures of this commitment include but are not limited to, cooperative relationships with the JTPA administrative entity (in those instances where the service provider is not the administrative entity), coordination with the State JTPA organization, coordination with other programs or activities for the JTPA eligible population, including Job Opportunities and Basic Skills Training (JOBS), funds available for this project, evidence of research into additional funding sources, ability of the service provider to operate the program in the future and private sector involvement in project. Measures of organizational capacity include, but are not limited to, the number of clients the service provider intends to serve, the number of occupations for which the service provider intends to train, previous experience, present facilities, and ability to meet JTPA performance standards.

III. Additional Factors

Other factors may be considered in the selection process to diversify the group to allow for studying the appropriateness of the model in various settings and providers of various sizes. These factors include: geographic area, service area (SDA) size, urban or rural SDA, intended target population, and service provider's organizational size. If the applicant feels that other factors are significant or unique, please discuss these additional areas, as appropriate.

Questions about this Notice may be directed to Lisa Stuart or James Aaron at the DOL address or number above. Additional information about the CET job training model may be obtained from Max Martinez at the CET address or number above.

Signed at Washington, DC, this 12th day of May 1994.

Hugh S. Davies,

Director, Office of Employment and Training Programs.

[FR Doc. 94–12416 Filed 5–20–94; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc.

Waterford Steam Electric Station, Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38, issued to Entergy Operations, Inc. (the licensee), for operation of the Waterford Steam Electric Station, Unit 3 (Waterford), located in St. Charles Parish, Louisiana.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise 10 CFR part 20 references to reflect the new section numbers, change administrative controls for reporting and recordkeeping to achieve compliance with the new part 20, and revise definitions to ensure consistency with 10 CFR part 20. The change would revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents. The site boundary definition would be revised to exclude the areas over water as part of the unrestricted area, and the high-radiation area definition would be revised to meet the intent of the NRC draft generic letter, "Guidance for Modification of Technical Specifications to Reflect (A) Revisions to 10 CFR Part 20, 'Standards for Protection Against Radiation' and 10 CFR 50.36(a), 'Technical Specifications of Effluents from Nuclear Power Reactors,' (B) Related Current Industry Initiatives, and (C) Miscellaneous Related Editorial Clarifications,". These changes are in response to the licensee's application for amendment dated February 11, 1994, implementing the new 10 CFR part 20.

The Need for the Proposed Action

The proposed action is needed for the licensee to retain operational flexibility, as far as is consistent with 10 CFR part 50, appendix I, in implementing the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

With regard to the actual release rates (referenced in the Technical Specifications (TS) as a dose rate to the maximally exposed member of the

public), the proposed revision will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed amendment to the TS, any alternative to the amendment will have either no significantly different environmental impact or will have greater environmental impact. The principal alternative would be to deny the requested amendment. Denying the amendment would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of Waterford, dated September 1991.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the application for amendment dated February 11, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 12th day of May 1994.

For the Nuclear Regulatory Commission.

William D. Becker,

Director, Project Directorate IV-1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94-12502 Filed 5-20-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-528, STN 50-529, and STN 50-530]

Arizona Public Service Company, et al. Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated October 23,1992, filed by Thomas J. Saporito, Jr., under § 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The petition contained statements and allegations regarding the main steam and pressurizer safety valves and other matters regarding the operation of the Palo Verde Nuclear Generating Station (Palo Verde). The Petition requested that the three Palo Verde units be immediately shut down until such time as a safety evaluation can be performed on the safety valves at Palo Verde. The Petition also requested that the NRC initiate a proceeding to show cause why the operating licenses for the Palo Verde units should not be modified, suspended, or revoked. In a supplement to the Petition dated January 4, 1993, Petitioner also requested that the NRC take appropriate enforcement action against Arizona Public Service Company (the licensee) and deny the license amendment application dated November 13, 1990, regarding revised setpoint tolerances for the main steam and pressurizer safety valves.

The Director of the Office of Nuclear Reactor Regulation has determined that the requests should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD-94-04), which is available for inspection and copying in the Commission's Public Document Room, 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.

A copy of the decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the decision within that time.

Dated at Rockville, Maryland this 16th day of May 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94-12504 Filed 5-20-94; 8:45 am]

BILLING CODE 7590-01-M

Tennessee Valley Authority

[Docket Nos. 50-390 and 50-391

Availability of Safety Evaluation Report Supplement Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission (NRC) has published the Safety Evaluation Report, Supplement 13 (NUREG-0847, Supp. 13) related to the operation of Watts Bar Nuclear Plant, Units 1 and 2, Docket Nos. 50-390 and 50-391.

Copies of the report have been placed in the NRC's Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and in the Local Public Document room, Chattanooga-Hamilton Library, 1001 Broad Street, Chattanooga, Tennessee 37402, for review by interested persons. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. GPO deposit account holders may charge orders by calling 202-512-2249 or 2171. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland this 2nd day of May 1994.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Regulatory Commission.

[FR Doc. 94-12499 Filed 5-20-94; 8:45 am]

BILLING CODE 7590-01-M

Correction to Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Detroit Edison Company, Docket No. 50-341, Fermi-2

In notice document 94-11226, beginning on page 24745, in the issue of Thursday, May 12, 1994, make the following correction:

On page 24757. in the first column following the heading *Date of Application for Amendment:* change the date from "May 23, 1993," to "May 24, 1993."

Dated at Rockville, Maryland, this 17th day of May 1994.

For the Nuclear Regulatory Commission.

Timothy G. Colburn, Sr.,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–12496 Filed 5–20–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

Arizona Public Service Company, et al.; Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 75 to Facility Operating License No. NPF–41, Amendment No. 61 to Facility Operating License No. NPF–51, and Amendment No. 47 to Facility Operating License No. NPF–74, issued to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power and Southern California Public Power Authority (licensees), which revised the Technical Specifications for operation of the Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3 located in Maricopa County, Arizona. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to increase the pressurizer safety valve (PSV) setpoint tolerance from +/−1 percent to +3 percent and −1 percent, the main steam safety valve (MSSV) setpoint tolerance from +/−1 percent to +/−3 percent, reducing the high pressurizer pressure trip setpoint (HPPT) response time from 1.15 seconds to 0.5 second, and reducing the TS minimum auxiliary feedwater (AFW) pump flow requirement from 750 gallons per minute (GPM) to 650 GPM.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 27, 1990 (55 FR 53220). A request for a hearing or petition for leave to intervene was filed following this notice. By Memorandum and Order dated May, 9, 1991 (LBP–91–19), a petition for leave to intervene and a request for hearing filed by the intervenors was granted. However, the intervenors later withdrew that challenge. By Memorandum and Order dated September 30, 1991 (LBP–91–37A), the proceeding was terminated.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (59 FR 17403).

For further details with respect to the action see (1) The application for amendment dated November 13, 1990, and supplemented May 27, 1992, May 13, 1993, and November 12, 1993, (2) Amendment No. 75 to License No. NPF–41, (3) Amendment No. 61 to License No. NPF–51, (4) Amendment No. 47 to License NO. NPF–74, (4) the Commission's related Safety Evaluation, and (5) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 16th day of May 1994.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate IV–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–12495 Filed 5–20–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee) for operation of the River Bend Station located in St. Francisville, Louisiana.

The proposed amendment would revise the technical specifications (TSs) by removing component lists from the TSs in accordance with NRC Generic Letter (GL) 91–08 and by removing the schedule for withdrawal of reactor vessel material specimen capsules from the TSs in accordance with GL 91–01.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will not result in any hardware or operating changes. The proposed change is based upon Generic Letters 91–01 and 91–08 and merely removes component lists, removes details relating to the component lists, provides clarifying information supporting the removal of the component listings, or removes details (which are considered administrative) that are no longer applicable to the Technical Specifications. The components listed in the affected Technical Specifications are assumed in the mitigation of accident and transient events. The removal of tabular component listings from the Technical Specifications does not impact affected component OPERABILITY requirements. Technical Specifications will continue to

require the components to be OPERABLE. Action statements and surveillance requirements for the components will also remain in the Technical Specifications. The tabular component lists are relocated to the Technical Requirements Manual which will be in accordance with the change control provisions specified in the Administrative Controls Section of the Technical Specifications (Specification 6.5.2). Therefore, this change is administrative in nature and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes to parameters governing normal plant operation. The proposed change will not impose any different requirements and adequate control of information will be maintained. No new failure modes are introduced. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumption. The proposed changes do not alter the scope of equipment currently required to be OPERABLE or subject to surveillance testing, nor do the proposed changes affect any instrument setpoints or equipment safety functions. Therefore the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involved no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 22, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 14, 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 Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 12th day of May 1994.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–12503 Filed 5–20–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 15000042, License No. TX–L02627, EA 94–076]

Panhandle N.D.T. & Inspection, Inc., Borger, Texas; Confirmatory Order Rescinding Suspension Order and Modifying Authority To Operate Pursuant to General License

I

Panhandle N.D.T. & Inspection, Inc. (Licensee) is the holder of Texas Department of Health Radioactive Material License No. L02627. Texas is an Agreement State The license authorizes the possession and use of sealed sources of iridium–192 in industrial radiographic exposure devices at temporary job sites within the State of Texas. Pursuant to 10 CFR 150.20(a), an Agreement State licensee is granted a general license by the U.S. Nuclear Regulatory Commission (NRC) to possess and use these radiographic exposure devices in non-Agreement States where the NRC maintains jurisdiction. Pursuant to 150.20(b)(1), before engaging in such use, Agreement State licensees are required to notify the NRC of their intent to conduct activities in non-Agreement States under the terms of the general license granted by 10 CFR 150.20(a). They are required to file four copies of NRC Form–241 and copies of their Agreement State license with the Regional Administrator of the NRC Regional Office for the NRC Region in which the Agreement State that issued the license is located.

II

In January 1990 the NRC issued a Notice of Violation to the Licensee for failing to follow the requirements of 10 CFR 150.20(b). As a result of an investigation in April 1992, the NRC issued an Order Suspending General License (Effective Immediately) on May 18, 1992, for deliberate, repeat violations of the same provision. The Order suspends the Licensee's authority to conduct activities in non-Agreement States until the Order is relaxed or rescinded.

III

In a letter of December 30, 1993, the Licensee requested permission to resume activities in non-Agreement States. On February 15, 1994, a transcribed meeting with the Licensee's president and owner was conducted in NRC's Region IV offices in Arlington, Texas. In that meeting, the president and owner expressed his recognition of the importance of proper training, an emphasis on safety, and compliance with all regulatory requirements, including filing NRC Form 241 when required. In addition, the Licensee indicated his willingness to comply with additional certification and advance notice requirements that the NRC might impose as a condition for being allowed to resume NRC licensed activities in non-Agreement States.

The staff believes that the Licensee has recognized the importance of compliance with regulatory requirements and if allowed to resume NRC licensed activities in non-Agreement States with additional certification and notification requirements, the Licensee will comply with all regulatory requirements, and that the May 18, 1992 Order Suspending General License (Effective Immediately) should be rescinded, subject to certain requirements. These requirements include certification as to training and knowledge of subpart B of 10 CFR part 34 of all employees engaged in radiographic operations and advance notice to the NRC of NRC licensed activities to be conducted in non-Agreement States. Implementation of these requirements would provide enhanced assurance that radiographic operations will be conducted safely and in compliance with requirements.

I find that the Licensee's commitments as set forth above are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured, and should be confirmed by this Order. The Licensee has agreed to the terms and issuance of this Confirmatory Order in a telephone call on May 6, 1994, between Mr. William Fisher of the NRC and Mr. Orvil Couch, president and owner, Panhandle N.D.T. & Inspection, Inc.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR part 150, It Is Hereby Ordered, That Panhandle N.D.T.

& Inspection, Inc.'s Authority To Conduct NRC-Licensed Activities In Non-Agreement States Under The General License Granted By 10 CFR 150.20(a) Is Modified As Follows:

1. The Order dated May 18, 1992 is rescinded;

2. When the Licensee next files an NRC Form 241, in addition to complying with all requirements of 10 CFR 150.20(b), the Licensee shall also certify, under oath or affirmation, that:

a. It has a training plan in place concerning the requirements of subpart B of 10 CFR part 34;

b. It has trained all present employees engaged in radiography operations, and will train all such future employees, in the requirements of subpart B of 10 CFR part 34; and

c. All current employees engaged in radiography operations have read, and future employees will read, and understand subpart B of 10 CFR part 34; and

3. For a period of three years from the date of this Order, in addition to complying with the requirement in 10 CFR 150.20(b)(1), the Licensee shall notify NRC Region IV, by 9 a.m. (Central Time) Monday (or Tuesday, if Monday is a federal holiday) of each week that radiography is planned in non-Agreement States, of the field sites where radiography is planned that week, as well as the specific date and time that the radiography is planned. If unplanned work arises after the Monday notification, the new work cannot be done in a non-Agreement State unless the NRC has been provided 24 hours notice. Notification shall be made to William L. Fisher, Chief, Nuclear Materials Licensing Branch, or his designated representative, at (817) 860-8215.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 6111 Ryan Plaza, suite 400, Arlington, TX 76011, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

Dated at Rockville, Maryland, this 9th day of May 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94-12498 Filed 5-20-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 15000004, License No. 0373-70 (CA), EA 93-201]

Richardson X-Ray, Inc., Rancho Dominerey, California, Order Imposing Civil Monetary Penalties

I

Richardson X-Ray, Inc. (Licensee or Richardson) is the holder of Byproduct Material License No. 0373-70 issued by the State of California. The license authorizes the Licensee to possess and use sealed sources in industrial radiographic exposure devices within the State of California. Pursuant to 10 CFR 150.20 and Richardson's California license, Richardson is authorized to possess and use licensed byproduct materials to perform industrial radiography in Non-Agreement States and areas under exclusive Federal jurisdiction.

II

An inspection by the Nuclear Regulatory Commission (NRC) was conducted on July 29 and 30, 1993, of the Licensee's activities that were performed in an area of exclusive Federal jurisdiction at Vandenburg Air Force Base, California. The results of the inspection determined that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated November 5, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations. The Licensee responded to the Notice in a letter dated November 30, 1993. In its response, the Licensee admitted the violations assessed civil penalties, but requested that the proposed civil penalties be remitted based on its corrective actions and its alleged inability to pay the proposed $25,000 civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for remission contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the Licensee's timely and extensive corrective actions support a $5,000 reduction of the $25,000 civil penalties proposed in the November 5, 1993 Notice, based on mitigation consistent with the Enforcement Policy.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay civil penalties in the full amount of Twenty Thousand Dollars ($20,000) by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, USNRC, Washington, DC 20555. This payment shall be made within thirty (30) days of the date of this Order or in accordance with the attached Promissory Note for Payment of the Civil Penalties (Note). If payment is to be in accordance with the attached Note, the Licensee within thirty (30) days of the date of this Order shall submit the signed Note in duplicate to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Mail stop 7H5, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 13th day of May 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On November 5, 1993, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued to Richardson X-Ray, Inc. (Licensee) for violations identified during an NRC inspection conducted on July 29 and 30, 1993. The Licensee responded to the Notice in a letter, dated November 30, 1993. In its response, the Licensee admitted the violations but requested remission of the penalties, based on its corrective actions and its alleged inability to pay. The NRC's evaluations and conclusion regarding the Licensee's requests are as follows:

Summary of Licensee's Request for Mitigation

The Licensee admitted the violations, but requested remission of the proposed civil penalties, in whole or in part, on the following bases:

1. In response to earlier violations of state radiography requirements, the State of California had required the Licensee to obtain the services of a consultant to provide radiation safety training and perform unannounced job site surveys of each radiographer. The cost of hiring the consultant was $10,000.

2. Corrective actions taken by the Licensee after the Enforcement Conference included appointing a new RSO and terminating the prior RSO, and implementing a disciplinary policy for radiographic personnel.

3. The imposition of the civil penalties would cause a financial burden on the licensee to the point of possible forfeiture of its radioactive materials license.

NRC Evaluation of Licensee's Request for Mitigation

The NRC has evaluated the Licensee's response and has determined that an adequate basis was not provided for full remission or reduction of the civil penalties, however mitigation of the civil penalties is warranted based on the Licensee's corrective actions is warranted. In particular:

1. Earlier inspections by the NRC and the State of California had identified similar violations by Licensee personnel during the two years preceding the July 1993 NRC inspection. For example, in December 1991 Licensee was cited by the State of California for: (1) Failure to perform surveys of the radiographic exposure device, (2) failure to recharge a pocket dosimeter at the beginning of the shift, and (3) failure to perform quarterly audits of radiographic personnel.

In April 1992, the Licensee was cited by the State of California for: (1) Failure to wear personal monitoring devices, (2) failure to perform surveys of the radiographic exposure device, (3) failure to post the restricted area and high radiation area, (4) failure to maintain surveillance of the restricted area to prevent unauthorized access into the high radiation area, (5) failure to maintain records of surveys, source usage, and training, and (6) failure to perform quarterly audits of radiographic personnel.

In May 1992, the State of California held an Enforcement Conference with the Licensee to discuss the violations identified during the April 1992 inspection. As a result of the Enforcement Conference the Licensee was required to hire a consultant to perform radiation safety training and audits of radiographic personnel. The Licensee's hiring of a consultant in May 1992 did not prevent recurrence of the same types of violations in July 1993.

Costs incurred by licensees to ensure compliance and implementation of their radiation safety programs are not considered in determining the base civil penalty, nor in escalating or mitigating the civil penalty.

2. The Licensee cites additional corrective actions in its response that include appointing a new RSO, terminating the prior RSO and implementing a disciplinary policy for radiographic personnel. The NRC recognizes that the Licensee took immediate corrective actions following the inspector's identification of the violations which included retraining of all radiographers and assistant radiographers, monitoring with regular unannounced job site audits, ensuring radiographers have the needed equipment prior to leaving for the job and ensuring that the radiographers are trained on all equipment.

The November 5, 1993, Notice stated that based on the repetitiveness of the violations, the Licensee's 1992 corrective actions were inadequate and that additional corrective actions needed to be considered to prevent further repetition. Given that the Licensee's more recent corrective actions were timely and extensive, these actions support a $5,000 reduction of the $25,000 civil penalties proposed in the November 5, 1993 Notice, based on mitigation consistent with the Enforcement Policy.

3. Based on its review of the financial information provided by the Licensee, the NRC determined that the Licensee possesses sufficient financial resources to pay the proposed civil penalties over a period of time, including interest. Accordingly, a payment schedule has been developed and is enclosed in the form of a Promissory Note in Payment of the Civil Penalties (Note). The Licensee, however, may pay the civil penalties in full, if it so desires.

In view of the above, the proposed civil penalties should not be reduced based on the Licensee's alleged inability to pay.

NRC Conclusion

Based on its evaluation of the Licensee's response, the NRC concludes that the Licensee's timely and extensive corrective actions support a $5,000 reduction of the $25,000 civil penalties proposed in the November 5, 1993 Notice.

Notice, based on mitigation consistent with the Enforcement Policy. Accordingly, civil monetary penalties in the amount of $20,000 should be imposed.

[FR Doc. 94–12497 Filed 5–20–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Performance-Based Contracting for Services

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is requesting comments and suggestions with regard to the establishment of a pilot program to increase the use of performance-based contracting methods in the acquisition of services.

BACKGROUND: A major contract reform initiative of OFPP is to reform the manner by which the government contracts for services by introducing performance-based contracting methods. Performance-based contracting means structuring all aspects of an acquisition around the purpose of the work to be performed, as opposed to either the manner by which the work is to be performed or the use of broad and imprecise statements of work.

Numerous internal agency evaluations and investigations, General Accounting Office Reports, and congressional hearings have documented significant and systemic service contracting problems (i.e., cost overruns, performance delays, and performance problems). To correct these problems, OFPP published Policy Letter 91–2, Service Contracting (**Federal Register** Vol. 56, No. 72, p. 15113) on April 15, 1991, which requires the use of performance-based contracting to the maximum extent practicable when acquiring services. This approach provides the means to ensure that the appropriate quality level of performance is achieved, and that payment is made only for services that meet contract standards.

Performance-based contracting methods include: statements of work comprised of objective, measurable performance standards; quality

assurance surveillance plans and objective positive and negative incentives based on the statement of work criteria; selection procedures which include publishing draft solicitations for comment and requiring quality-related evaluation factors, including cost realism and past performance; and conversion from cost reimbursement to fixed price contracts.

To stimulate the government's conversion to performance-based service contracting, OFPP has developed a government-wide pilot project which relies on voluntary pledges by individual agencies to convert specified contracts for services to performance-based contracting methods. Agencies will be encouraged to limit their pledged contracts to recurring requirements to facilitate before and after measurement and assessment of results. Agencies will also be asked to consider breaking up large level-of-effort umbrella contracts in order to increase competition and convert to completion-type contracts where possible, thereby generating more innovation and cost effective proposals.

Agency pledges are also expected to include: Endorsement of the project by the agency head; establishment of a high-level agency task force to oversee the effort; agreement to share lessons learned and best practices with other agencies; and measurement of the results of the project using predetermined project measurement criteria. The proposed project measurement criteria are: contract price; level of competition; number of contract audits; customer (project officer) satisfaction; length of procurement cycle; and small business participation.

OFPP recognizes that performance-based service contracting will require cultural change and, therefore, must rely on the support and good faith efforts of both the agencies and the contracting community to be successful. Thus, to help ensure the success of this pilot project, OFPP will also ask contractors for their cooperation. Working with associations representing large numbers of service providers, OFPP is considering asking potential contractors to: endorse this project; assist OFPP in identifying requirements that are typically acquired on a cost reimbursement basis for the government but on a fixed price basis for commercial clients; identify obstacles in government service contracting that need to be overcome to implement performance-based contracting methods and/or preferred commercial contracting practices; and voluntarily refrain from bid protests and disputes related to procurements contained in the agency pledges.

PUBLIC MEETING: A public meeting will be held in the White House Conference Center, Eisenhower Room, 726 Jackson Place, Washington, DC 20503 at 2 p.m. on Thursday, June 16, 1994. Persons or organizations wishing to present ideas or suggestions about the pilot program or other specific actions that OFPP and other government agencies can take to increase the use of performance-based service contracting are encouraged to attend the meeting. Persons and organizations wishing to make oral statements will be given five minutes each to present their views. Persons wishing to attend and/or present statements at the public meeting should contact Ms. Margaret B. Davis at 202–395–6803 on or before June 9, 1994 in order to be placed on the agenda and to enable OFPP to adequately plan the meeting.

DATES: Comments and suggestions in response to this **Federal Register** notice should be received at OFPP by close of business June 9, 1994. Copies of statements to be presented at the public meeting also should be received by that time.

ADDRESSES: Comments and statements should be submitted to the OFPP, New Executive Office Building, room 9001, 725 17th Street NW., Washington, DC 20503, Attention: Stanley Kaufman.

FOR FURTHER INFORMATION CONTACT: Stanley Kaufman, Deputy Associate Administrator, OFPP, 202–395–6810.

Steven Kelman,

Administrator.

[FR Doc. 94–12483 Filed 5–20–94; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on March 31, 1994 (59 FR 15242). Individual authorities established or revoked under Schedules A and B and established under Schedule C between March 1 and March 31, 1994, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1994, will also be published.

Schedule A

Department of the Treasury

U.S. Customs Service

Positions of part-time, intermittent, mixed tour, or seasonal Customs Inspectors, Port Directors, Inspectional Aides, Clerks and Cashiers at remote/isolated locations where examination is impractical. A remote/isolated location is outside the local community area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing OPM office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the Customs Service under a combination of this and any other appointment for more than 1,040 working hours in a service year. Effective February 2, 1994.

Schedule B

No Schedule B authorities were established or revoked during March 1994.

Schedule C

Agency for International Development

Deputy Director, Office of Public Affairs to the Assistant Administrator, Bureau of Legislative and Public Affairs. Effective March 21, 1994.

Special Assistant to the Assistant Administrator, Bureau of Europe and new Independent States. Effective March 24, 1994.

Special Assistant and Legal Counsel to the General Counsel. Effective March 30, 1994.

Public Affairs Specialist to the Assistant Administrator, Bureau of Legislative and Public Affairs. Effective March 30, 1994.

Commodity Futures Trading Commission

Governmental Affairs Officer to the Chairman. Effective March 31, 1994.

Consumer Product Safety Commission

Director, Office of Information and Public Affairs to the Chairman. Effective March 10, 1994.

Special Assistant to the Chairman. Effective March 10, 1994.

Special Assistant (Legal) to the Chairman. Effective March 10, 1994.

Executive Assistant to the Chairman. Effective March 10, 1994.

Director, Office of Congressional Relations to the Chairman. Effective March 10, 1994.

Staff Assistant to the Chairman. Effective March 10, 1994.

Department of Agriculture

Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service. Effective March 2, 1994.

Confidential Assistant to the Manager, Federal Crop Insurance Corporation. Effective March 7, 1994.

Private Secretary to the Manager, Federal Crop Insurance Corporation. Effective March 11, 1994.

Confidential Assistant to the Assistant Secretary for Science and Education. Effective March 11, 1994.

Confidential Assistant to the Administrator, Rural Electrification Administration. Effective March 11, 1994.

Confidential Assistant to the Manager, Federal Crop Insurance Corporation. Effective March 11, 1994.

Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective March 11, 1994.

Private Secretary to the Chief Financial Officer, Office of the Assistant Secretary for Administration. Effective March 11, 1994.

Staff Assistant to the Assistant Secretary for Science and Education. Effective March 11, 1994.

Special Assistant to the Director of Intergovernmental Affairs, Office of Public Affairs. Effective March 24, 1994.

Confidential Assistant to the Director of Intergovernmental Affairs. Effective March 30, 1994.

Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective March 30, 1994.

Confidential Assistant to the Secretary of Agriculture. Effective March 30, 1994.

Department of the Army (DOD)

Special Assistant to the Executive Director (Special Assistant to the Secretary of the Army), World War II Commemorative Committee. Effective March 4, 1994.

Department of Commerce

Assistant Director for Communications to the Director, Bureau of the Census. Effective March 1, 1994.

Special Assistant to the Under Secretary for Travel and Tourism, U.S. Travel and Tourism Administration. Effective March 3, 1994.

Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective March 7, 1994.

Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective March 11, 1994.

Confidential Assistant to the Director of White House Liaison. Effective March 11, 1994.

Intergovernmental Affairs Specialist to the Chief Intergovernmental Affairs, Office of Sustainable Development and Intergovernmental Affairs (NOAA). Effective March 11, 1994.

Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration. Effective March 11, 1994.

Confidential Assistant to the Deputy Secretary. Effective March 17, 1994.

Special Assistant to the Under Secretary. Effective March 17, 1994.

Special Assistant to the Director, White House Liaison. Effective March 18, 1994.

Special Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration. Effective March 21, 1994.

Public Affairs Specialist to the Director of Legislative, Intergovernmental and Public Affairs, Office of the Under Secretary for Export Administration. Effective March 21 1994.

Special Assistant to the Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration. Effective March 21, 1994.

Special Assistant to the Deputy Under Secretary for Policy Development, International Trade Administration. Effective March 21, 1994.

Special Assistant to the Deputy Under Secretary for Policy Development, International Trade Administration. Effective March 21, 1994.

Special Assistant to the Deputy Assistant Secretary for Basic Industries, International Trade Administration. Effective March 22, 1994.

Director of Public Affairs to the Under Secretary, Technology Administration. Effective March 30, 1994.

Director of the Advocacy Center to the Deputy Assistant Secretary for Trade Development, International Trade Administration. Effective March 30, 1994.

Confidential Assistant to the Assistant to the Deputy Secretary. Effective March 31, 1994.

Department of Defense

Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs). Effective March 11, 1994.

Chauffeur to the Secretary of Defense. Effective March 15, 1994.

Executive Assistant to the Secretary of Defense. Effective March 15, 1994.

Special Assistant to the Assistant Secretary of Defense for Health Affairs. Effective March 15, 1994.

Deputy Director of Administration and Policy to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs). Effective March 15, 1994.

Personal and Confidential Assistant to the Secretary of Defense. Effective March 15, 1994.

Private Secretary to the Assistant Secretary of Defense (Regional Security Affairs). Effective March 15, 1994.

Confidential Assistant to the Deputy Assistant Secretary of Defense. Effective March 21, 1994.

Chauffeur to the Deputy Secretary of Defense. Effective March 22, 1994.

Private Secretary to the Principal Deputy General Counsel. Effective March 25, 1994.

Special Assistant (Research) to the Assistant to the Secretary of Defense (Public Affairs). Effective March 31, 1994.

Department of Education

Confidential Assistant to the Director, Intergovernmental and Constituent Services. Effective March 7, 1994.

Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective March 11, 1994.

Confidential Assistant to the Director, Community Development Services Staff, Community Reform Initiatives Services. Effective March 11, 1994.

Confidential Assistant to the Assistant Secretary, Office of Legislative and Congressional Affairs. Effective March 16, 1994.

Confidential Assistant to the Director Intradepartmental Services Staff, Federal Interagency and International Services. Effective March 18, 1994.

Special Assistant to the Director, Community Development Services Staff, Reform Initiatives Services. Effective March 21, 1994.

Confidential Assistant to the Director, Interagency Services Staff, Federal Interagency and International Services. Effective March 21, 1994.

Confidential Assistant to the Director, Information Resources Services Center, Community Reform Initiatives Services. Effective March 21, 1994.

Special Assistant to the Secretary of Education. Effective March 21, 1994.

Liaison for Community and Junior Colleges to the Assistant Secretary, Office of Vocational and Adult Education. Effective March 24, 1994.

Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective March 30, 1994.

Chief of Staff to the Deputy Secretary. Effective March 30, 1994.

Confidential Assistant to the Chief of Staff, Office of the Secretary of Education. Effective March 31, 1994.

Department of Energy

Staff Assistant to the Deputy Assistant Secretary for Building Technologies, Office of Energy Efficiency and Renewable Energy. Effective March 10, 1994.

Staff Assistant to the Director, Office of Energy Research. Effective March 10, 1994.

Special Assistant to the Under Secretary of Energy. Effective March 10, 1994.

Staff Assistant to the Director, Office of Intelligence and National Security. Effective March 10, 1994.

Special Assistant to the Assistant Secretary for Environmental Restoration and Waste Management. Effective March 10, 1994.

Senior Advisor for Diversity Programs and Education Initiatives to the Director, Office of Science Education and Technical Information. Effective March 10, 1994.

Staff Assistant to the Assistant Secretary for Defense Programs. Effective March 10, 1994.

Staff Assistant to the Principal Deputy Assistant Secretary, Office of Energy Efficiency and Renewable Energy. Effective March 10, 1994.

Policy Specialist to the Director, Office of Strategic Planning and Analysis. Effective March 10, 1994.

Policy Analyst to the Chief Financial Officer. Effective March 10, 1994.

Special Assistant to the Director, Office of Public Accountability, Environmental Restoration and Waste Management. Effective March 30, 1994.

Department of Health and Human Services

Confidential Assistant to the Deputy Assistant Secretary for Planning and Evaluation. Effective March 15, 1994.

Confidential Assistant to the Assistant Secretary for Planning and Evaluation. Effective March 15, 1994.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective March 16, 1994.

Special Assistant to the Administrator, Substance Abuse and Mental Health Services Administration. Effective March 22, 1994.

Special Assistant for Media Affairs, Office of National Aids Policy, to the Assistant Secretary for Health. Effective March 29, 1994.

Special Assistant to the Deputy Assistant Secretary for Health (Communications). Effective March 29, 1994.

Special Assistant to the Director, Office for Civil Rights. Effective March 31, 1994.

Department of Housing and Urban Development

Special Assistant (Litigation Liaison) to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective March 11, 1994.

Special Projects Officer to the Director, Special Actions Office. Effective March 15, 1994.

Special Projects Officer to the Director, Special Actions Office. Effective March 21, 1994.

Regional Administrator/Regional Housing Commissioner, Region X, Seattle, WA, to the Senior Advisor and Assistant to the Secretary for Field Management. Effective March 31, 1994.

Special Assistant to the President, Government National Mortgage Association. Effective March 31, 1994.

Special Projects Officer to the Regional Administrator-Regional Housing Commissioner, Region VI, Fort Worth, TX. Effective March 31, 1994.

Special Projects Officer to the Regional Administrator-Regional Housing Commissioner, Region VI, Fort Worth, TX. Effective March 31, 1994.

Special Assistant (Advance/Security) to the Director, Executive Scheduling. Effective March 31, 1994.

Department of the Interior

Special Assistant to the Director, Minerals Management Service. Effective March 10, 1994.

Special Liaison for Congressional and Legislative Affairs to the Director of Policy and External Affairs, Bureau of Reclamation. Effective March 10, 1994.

Special Assistant to the Director, Minerals Management Service. Effective March 18, 1994.

Special Assistant to the Director, Bureau of Land Management. Effective March 18, 1994.

Special Assistant to the Special Assistant to the Secretary and White House Liaison. Effective March 18, 1994.

Special Assistant to the Assistant Secretary—Water & Science. Effective March 18, 1994.

Special Liaison for Public Affairs to the Director, of Policy and External Affairs, Bureau of Reclamation. Effective March 21, 1994.

Special Assistant to the Director, Office of the Surface Mining. Effective March 21, 1994.

Special Assistant to the Director, Bureau of Land Management. Effective March 30, 1994.

Department of Justice

Special Assistant to the Administrator, Office for Juvenile Justice and Delinquency Prevention. Effective March 2, 1994.

Special Assistant to the Director, Office for Victims of Crime. Effective March 2, 1994.

Special Assistant to the Director, Bureau of Justice Assistance. Effective March 2, 1994.

Special Assistant to the Director, Bureau of Justice Statistics. Effective March 2, 1994.

Special Assistant to the Director, National Institute of Justice. Effective March 2, 1994.

Secretary (OA) to the United States Attorney, Western District of Michigan, Grand Rapids, MI. Effective March 7, 1994.

Staff Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective March 7, 1994.

Secretary (OA) to the United States Attorney, District of Oregon, Portland, OR. Effective March 24, 1994.

Assistant to the Attorney General. Effective March 30, 1994.

Department of Labor

Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 10, 1994.

Staff Assistant to the Deputy Under Secretary for International Labor Affairs. Effective March 15, 1994.

Staff Assistant to the Administrator, Wage and Hour Division. Effective March 18, 1994.

Special Assistant to the Director, Women's Bureau. Effective March 21, 1994.

Special Assistant to the Assistant Secretary to the Assistant Secretary for Public Affairs. Effective March 29, 1994.

Department of State

Public Affairs Specialist to the Assistant Secretary, Bureau of Economics and Business Affairs. Effective March 7, 1994.

Staff Assistant to the Director of White House Liaison. Effective March 10, 1994.

Correspondence Officer to the Assistant Secretary, Bureau of Legislative Affairs. Effective March 18, 1994.

Department of Transportation

Chief of Staff to the Federal Railroad Administrator. Effective March 14, 1994.

Special Assistant to the Administrator, Federal Highway Administration. Effective March 22, 1994.

Department of the Treasury

Policy Analyst to the Under Secretary for Domestic Finance. Effective March 10, 1994.

Travel Assistant to the Director, Administration Operations Division. Effective March 30, 1994.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective March 30, 1994.

Environmental Protection Agency

Special Assistant to the Chief of Staff. Effective March 16, 1994.

Counsel to the Assistant Administrator for Air and Radiation. Effective March 28, 1994.

Legislative Coordinator to the Assistant Administrator, Office of Solid Waste and Emergency Response. Effective March 28, 1994.

General Services Administration

Special Assistant to the Regional Administrator, Region 4, Atlanta, GA. Effective March 21, 1994.

National Credit Union Administration

Staff Assistant to the Chairman of the Board, National Credit Union Administration. Effective March 30, 1994.

Special Assistant to the Executive Director. Effective March 30, 1994.

Occupational Safety and Health Review Commission

Special Assistant to the Chairman. Effective March 3, 1994.

Confidential Assistant to the Member (Commissioner). Effective March 7, 1994.

Counsel to a Member (Commissioner). Effective March 7, 1994.

Counsel to a Member (Commissioner). Effective March 7, 1994.

Office of the United States Trade Representative

Congressional Affairs Specialist to the Assistant U.S. Trade Representative for Congressional Affairs. Effective March 11, 1994.

Confidential Assistant to the Deputy U.S. Trade Representative, Geneva, Switzerland Effective March 11, 1994.

Securities and Exchange Commission

Confidential Assistant to the Chairman. Effective March 16, 1994.

Writer-Editor to the Chairman. Effective March 24, 1994.

Small Business Administration

Regional Administrator, Region VI, Dallas, TX, to the Administrator, Small Business Administration. Effective March 2, 1994.

Regional Administrator, Region VII, Kansas City, MO, to the Administrator, Small Business Administration. Effective March 10, 1994.

Director of Strategic Planning and Policy to the Associate Deputy Administrator for Finance, Investment and Procurement. Effective March 10, 1994.

Deputy Director of External Affairs to the Administrator. Effective March 18, 1994.

Regional Administrator, Region II, New York, NY, to the Administrator, Small Business Administration. Effective March 18, 1994.

Regional Administrator, Region III, Philadelphia, PA, to the Administrator, Small Business Administration. Effective March 21, 1994.

United States Trade and Development Agency

Congressional Liaison Officer to the Director, Trade and Development Agency. Effective March 11, 1994.

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–12364 Filed 5–20–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34071; File No. SR–Amex–94–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Indexed Term Notes

May 17, 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 May 13, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under Section 107A of the Amex Company Guide ("Guide"), Indexed Term Notes ("Notes"), the return on which is based in whole or in part on changes in the value of a static portfolio of ten equity securities. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

Under section 107 of the Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[2] The Amex now proposes to list for trading under section 107A of the Guide, Notes whose value is based in whole or in part on a static index composed of ten actively-traded equity securities to be determined and published by Lehman Brothers on or about July 1, 1994 ("Index"). The securities to be included in the Index

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[1] On May 16, 1994, the Amex filed Amendment No. 1 to the proposed rule change to alter the eligibility standards for Index (as defined herein) components as originally proposed. As amended, non-U.S. component securities (stocks or American Depositary Receipts) that are not subject to comprehensive surveillance agreements may not in the aggregate represent more than two components of the Index. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Derivatives and Equity Oversight, Division of Market Regulation, Commission, dated May 16, 1994.

[2] See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

will be announced by Lehman Brothers at or as close as possible to the time of the offering of the Notes.

The Notes will be non-convertible debt securities and will conform to the listing guidelines under Section 107A of the Guide. Specifically, the Notes must have: (1) A minimum public distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $20 million; and (4) a term of at least one year. Additionally, the issuer of the Notes (*i.e.*, Lehman Brothers) must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years.[3]

Although the specific maturity date will not be established until immediately prior to the time of the offering, the Notes will provide for maturity within approximately one year from the date of issue. Notes may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the Index. In addition, the Notes may feature a "cap" on the maximum amount and/or a "floor" on the minimum amount to be paid either periodically or at maturity. Prior to the commencement of listing and trading of the Notes, the Exchange shall distribute a circular to its membership providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines.

The ten components of the Index shall meet the following criteria: (1) A minimum market capitalization of $75 million, except that one component security may have a market capitalization of not less than $50 million; (2) trading volume in each of the six months prior to the offering of the Notes of not less than one million shares, except that one component security may have a trading volume in each of the six months prior to the offering of the Notes of not less than 500,000 shares; (3) at least nine of the ten components of the Index will meet the then current criteria for standardized options trading set forth in Exchange Rule 915; (4) all components of the Index will be listed on the Amex or the New York Stock Exchange, or will be National Market securities traded through the National Association of Securities Dealers Automated Quotation System; and (5) no more than two components of the Index shall be non-U.S. securities that are not subject to comprehensive surveillance sharing agreements between the appropriate regulatory organizations.

The Index will be calculated using an "equal dollar-weighting" methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. To create the Index, a portfolio of ten equity securities will be established by the issuer, Lehman Brothers, representing an investment of $10,000 in each component security (rounded to the nearest whole share). The value of the Index will equal the current market value of the sum of the assigned number of shares of each of the component securities divided by the current Index divisor. The Index divisor will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the establishment of the Index.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer of the imposition of certain foreign taxes on shareholders of a foreign issuer. Shares of a component security may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, the termination of a depositary receipt program, or the spin-off of a subsidiary. If the security remains in the Index, the number of shares of that security may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index.

The value of the Index will be calculated continuously by the Amex and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate 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 of the date of 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 reasons 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 in the Commission's Public Reference Section, 450 Fifth Street NW.,

[3] As an alternative to these financial criteria, the issuer may have either: (1) Assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity in excess of $20 million.

Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–16 and should be submitted by June 13, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12468 Filed 5–20–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in Three Over-the-Counter Issues and to Withdraw Unlisted Privileges in Three Over-the-Counter Issues

May 16, 1994.

On May 3, 1994, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7–12397	ALTR	Altera Corporation, Common Stock, No par value.
7–12398	MAMS	Mid Atlantic Medical Service, Common Stock, $0.01 per value.
7–12399	KLAC	KLA Instruments, Common Stock, $0.01 par value.

The above-referenced issues are being applied for as replacements for the following securities, which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act for the following issues:

File No.	Symbol	Issuer
7–12400	BSMT	Filenes Basement Corporation, Common Stock, $0.01 par value.
7–12401	CAMD	California Micro Devices, Common Stock, No par value.
7–12402	ZONE	Discovery Zone, Inc., Common Stock, $0.01 par value.

Replacement issues are being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before June 6, 1994, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12469 Filed 5–20–94; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12) (1993).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 2716; Amdt. 1]

Illinois; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective May 4, 1994, to close the incidence period and May 9 and 12, 1994 to include Alexander, Calhoun, Greene, Jersey, Mason, Monroe, Piatt, and St. Clair Counties in the State of Illinois as a disaster area as a result of damages caused by severe storms and flooding which occurred April 9 through May 4, 1994.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clinton, Fulton, Pike, Pulaski, Randolph, Scott, Tazewell, Union and Washington in the State of Illinois; Cape Girardeau, Mississippi, and Scott Counties in the State of Missouri; and Ballard County in the State of Kentucky may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the termination date for filing applications for physical damage is June 24, 1994 and for economic injury the deadline is January 26, 1995.

The economic injury numbers are: for Illinois, 825400; for Missouri, 824800; and Kentucky, 827300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 12, 1994.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 94–12490 Filed 5–20–94; 8:45 am]

BILLING CODE 8025–01–M

Tennessee; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective May 3, 1994, to include Cocke, Grainger, Hawkins, Johnson, Marion, Putnam and Van Buren Counties in the State of Tennessee as a disaster area as a result of damages caused by extensive rainfall and flash flooding which occurred March 25 through April 3, 1994.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Claiborne, Cumberland, DeKalb, Fentress, Franklin, Grundy, Hancock, Jackson, Overton, Smith, Sullivan, Union, Warren, and White in the State of Tennessee; Ashe, Avery and Watauga Counties in the State of North Carolina; and Grayson, Scott and Washington Counties in the State of Virginia may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

The interest rate for Businesses with Credit Available Elsewhere was incorrect as published, that interest rate should be shown as 7.700%

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 13, 1994 and for economic injury the deadline is January 17, 1995.

The economic injury number for Virginia is 826700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 11, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–12491 Filed 5–20–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2011]

International Telecommunications Advisory Committee; Radiocommunication Sector, Joint Working Party 7–8R; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector, Joint Working Party (JWP) 7–8R, will meet on June 15, 1994, 9:30 am to 1 pm at MITRE, 6305 Ivy Lane, suite 500, Greenbelt, Maryland.

ITU–R Study Groups 7 and 8 have established JWP 7–8R to consider compatibility between active spaceborne sensors and systems in the radionavigation and radiolocation services. The JWP will undertake studies needed to establish the technical bases for decisions on agenda items related to active sensors identified by WRC–95 for WRC–97. Mr. William Long, USA, will serve as Chairman of JWP 7–8R. The first meeting of the JWP will take place at the ITU in Geneva, from 9 to 11 November 1994.

Mr. John W. Kiebler has been appointed Chairman of U.S. ITU–R JWP 7–8R. The agenda for the meeting will be to organize a work plan to prepare for the Geneva meeting in November.

Draft Agenda

1. Approval of the Agenda.
2. Introductory Remarks.
3. Work Assigned to JWP 7–8R.
4. Contributions Needed for the November meeting of JWP 7–8R.
5. Development of a Work Plan for U.S. JWP 7–8R.
6. Consideration of available Contributions.
7. Time and Place of Future Meetings.
8. Other Business.

Members of the General Public may attend the meeting and join in the discussions, subject to the instructions of the U.S. Chairman, Mr. John Kiebler. Anyone planning to attend the meeting is requested to contact Mr. Kiebler, no later than 2 days before the meeting, at (301) 901–9213.

Dated: May 9, 1994.

Warren G. Richards,

Chairman, U.S. ITAC for ITU Radiocommunication Sector.

[FR Doc. 94–12549 Filed 5–20–94; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 2010]

Shipping Coordinating Committee Council and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:30 p.m., on Wednesday, June 8, 1994, in room 4315, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 72th Session of Council and 39th Session of the Technical Cooperation Committee of the International Maritime Organization (IMO) which is scheduled for June 13–17, 1994, at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and the draft U.S. positions. Among other things, the items of particular interest are:

a. Reports of the IMO committees and training institutions
b. Review of the IMO technical cooperation activities
c. Report on the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974
d. Report on the outcome of the Sixteenth Consultative Meeting of Contracting Parties to the 1972 London Dumping Convention
e. Report on the meeting of the London Convention 1972 Amendment Group
f. Relations with the United Nations and other organizations
g. Administrative and financial matters.

Members of the public may attend the meeting up to the capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard Headquarters (G–CI), 2100 Second Street SW., room 2114, Washington, DC 20593–0001 or by calling: (202) 267–2280.

Dated: May 11, 1994.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–12544 Filed 5–20–94; 8:45 am]

BILLING CODE 4710–7–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Industry Policy and Sector/Functional Advisory Committee Meetings

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Industry Policy and Sector/Functional Advisory Committee meetings.

SUMMARY: The meetings will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, the U.S. Trade Representative has determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, these meetings will be closed to the public.

DATES: The period of March 1, 1994 to March 1, 1996.

ADDRESSES: All meetings will be held at the U.S. Department of Commerce, 14th Street and Independence Avenue, Washington, DC 20230, unless an alternate site is necessary.

FOR FURTHER INFORMATION CONTACT: Debbie Leilani Shon, Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison, Office of the United States Trade Representative at (202) 395–6120 or Ann Reidy, Director, Trade Advisory Center, Department of Commerce at (202) 482–3268.

Debbie Leilani Shon,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 94–12645 Filed 5–20–94; 8:45 am]

BILLING CODE 3190–01–M

Request for Comment on Articles To Be Considered for Accelerated Tariff Elimination Under the North American Free-Trade Agreement (NAFTA)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of and request for comments on articles under consideration for negotiation with the Governments of Mexico and Canada for accelerated elimination of preferential NAFTA tariffs.

SUMMARY: Section 201(b) of the North American Free Trade Agreement Implementation Act of 1993 ("the Act") grants the President, subject to the consultation and lay-over requirements of section 103(a) of the Act, the authority to proclaim any accelerated

schedule for duty elimination that may be agreed to by the United States, Mexico and Canada under Article 302(3) of the North American Free Trade Agreement ("the NAFTA"). This notice is intended to inform the public of those articles on which the United States Government and the Governments of Mexico and Canada have agreed to consider accelerated elimination of duties under the NAFTA. Inclusion on this list does not signify that the parties have agreed to accelerate elimination of its duty, only that the parties will consider doing so.

SUPPLEMENTARY INFORMATION: Copies of a listing of specific products to be considered for accelerated tariff elimination, where the subheading is listed in Annex I with an asterisk, may be obtained from the following agencies:

For agricultural products (chapters 1–24 of the Harmonized Tariff Schedule of the United States (HTSUS)): U.S. Department of Agriculture, Foreign Agricultural Service, FAS Publications, room 5910–S, Washington, DC 20250–1000. The telephone number is (202) 720–7937; for non-agricultural products (chapters 25–99 of the HTSUS): U.S. Department of Commerce, International Trade Administration, Office of Mexico, room 3022, 14th & Constitution Ave. NW., Washington, DC 20230. The telephone number is (202) 482–0300. A complete product list and a concordance list showing the equivalent subheadings under consideration by all three countries are available from Office of the United States Trade Representative, Office of Public Affairs, 600 17th Street NW., room 101, Washington, DC 20506. The telephone number is (202) 395–3230.

Inquiries regarding other aspects of this notice or the tariff acceleration exercise should be directed to the Office of North American Affairs, USTR; the telephone is (202) 395–3412. Further information on this subject may be found in the **Federal Register** of December 23, 1993, volume 58, number 245, at pages 68186 through 68189.

Inquiries regarding the changes to be made to the Customs Tariff of Canada should be directed to the Interdepartmental Committee on FTA Acceleration, 140 O'Conner Street, 14th floor, Ottawa, Ontario, Canada K1A–OG5. Inquiries regarding changes to the Mexican Tariff Schedule of the General Import Duty Act should be directed to the office of the Director General de Estudios de Economicos, Unidad Negociadora del Tratado de Libre Comercio, Secretaria de Comercio y Fomento Industrial (SECOFI). The address is Alfonso Reyes 30, Piso 9, Colonia Hipodromo Condesa, 06140 Mexico, D.F.

Requests for Comments

Comments supporting or opposing accelerated duty elimination by the United States, Mexico and/or Canada for the articles provided for in the tariff subheadings listed in the Annexes will be accepted until June 20, 1994. Comments will be accepted by the Governments of Mexico and Canada until the same date. Parties interested in providing such comments should contact the offices cited above for the relevant requirements. Comments must be submitted in accordance with 15 CFR part 21003, preferably type-written, and must be submitted in ten copies to the Office of North American Affairs, U.S. Trade Representative, 600 17th Street NW., room 501, Washington, DC 20506. All submissions must specify: (1) The tariff subheading to which the comments refer, and the country(ies) of concern: the United States, Mexico and/or Canada, (2) the name, address and telephone number of the person, firm or organization making the comments, and (3) an indication as to whether the writer represents:

—Producer in the United States
—Importer in the United States
—Exporter in the United States
—Consumer in the United States
—Other, in the United States
Specify: _____
—Producer in Mexico
—Importer in Mexico
—Exporter in Mexico
—Consumer in Mexico
—Other, in Mexico
Specify: _____
—Producer in Canada
—Importer in Canada
—Exporter in Canada
—Consumer in Canada
—Other, in Canada
Specify: _____

Submissions not meeting these requirements cannot be considered.

Proposed Items To Receive Accelerated Duty Elimination

Articles in the Harmonized Tariff Schedule of the United States that are proposed for accelerated duty elimination are listed in Annex I to this notice. Lists of articles in the Mexican Tariff Schedule of the General Import Duty Act and the Customs Tariff of Canada that are proposed for accelerated duty elimination are listed in Annexes II and III, respectively. Inclusion on this list does not signify that the parties have agreed to accelerate elimination of its duty, only that the parties will consider doing so. Comments of the public on the advisability of an acceleration will be taken into account in determining the U.S. position with respect to each product under consideration. Petitions received by January 25, 1994, in accordance with the **Federal Register** of December 23, 1993, but not listed in this notice, shall be considered during the next round of tariff acceleration discussions with Mexico and Canada.

Advice of the United States International Trade Commission

The United States International Trade Commission is being furnished with the list of articles published in Annex I of this notice for the purpose of securing from the Commission its judgement as to the probable economic effect of accelerated elimination of U.S. duties under the NAFTA on industries producing like or directly competitive articles and on consumers.

Advice of the Private Sector Advisory Committee

Pursuant to section 103(a) of the Act, private sector advisory committees are being furnished with the list of articles published in the Annexes of this notice for their advice.

Articles That May Be Considered in Negotiations

Please read this section carefully. Except as noted, all articles provided for in the subheadings of the Harmonized Tariff Schedule of the United States that are listed in the Annexes to this notice are being considered for accelerated duty elimination. A description of articles provided for in these subheadings is available for Annex I in the "Harmonized Tariff Schedule of the United States (1994), Supplement 1," U.S. International Trade Commission Publication 2690. The "Customs Tariff" of Canada and the Mexican "Tarifa de la Ley del Impuesto General de Importació" (Tariff Schedule of the "General Import Duty Act") should be consulted for a description of the articles provided for in the tariff subheadings in Annex II and III.

For subheadings listed in the Annexes with an asterisk, only certain products will be considered for accelerated tariff elimination. A list of the specific products which will be considered is available (see **ADDITIONAL INFORMATION** above).

As with the NAFTA itself, the tariff acceleration exercise will result in three separate bilateral agreements between the United States and Mexico, the United States and Canada, and Canada and Mexico. Thus, in some cases, acceleration is not being considered among all three parties, as indicated in

the Annexes, and a subsequent agreement to accelerate may not include all countries indicated in the Annexes. As a rule, accelerated duty elimination is being considered on a reciprocal basis on the equivalent tariff subheadings by the parties involved. In many cases, however, one or two parties may already provide NAFTA duty-free treatment to one or both of the other parties. In such cases, the Annexes do not list products already eligible for NAFTA duty-free treatment. A concordance showing the equivalent items in all three tariff schedules, including those already duty-free, is available (see **ADDITIONAL INFORMATION** above).

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

Annex I

Subheading in the Harmonized Tariff Schedule of the United States containing products to be considered for accelerated removal of the duty on goods originating in Mexico or Canada under the North American Free Trade Agreement (NAFTA).

[Except as noted, all goods originating in Mexico or Canada that are provided for in the subheading listed below will be considered for accelerated removal of the U.S. import duty under the NAFTA. If the subheading is followed by the letters "MX" consideration of accelerated duty removal will be limited to goods only originating in Mexico. Similarly, if the subheading is followed by the letters "CA", consideration will be limited to goods only originating in Canada. An asterisk indicates that only certain products within the subheading will be considered. Information on obtaining a list of specific products is contained in the body of this notice.]

0406.10.50 *
0603.10.60 MX
0701.90.50 MX
0710.10.00 MX
0710.80.97 * MX
0710.90.90 MX
0712.10.00 MX
0804.50.60
0805.30.40 MX
0805.40.60 MX
0805.40.80 MX
0805.40.80 MX
1108.13.00 MX
1901.90.90 * MX
2001.90.20 MX
2001.90.35 MX
2001.90.39 MX
2001.90.60 MX
2002.90.00 MX
2004.10.80 MX
2005.60.00 MX
2005.90.50 MX
2005.90.55 MX
2005.90.80 MX
2008.19.90 * CA
2009.20.20 MX
2009.20.40 MX
2009.30.10 CA
2009.30.20 CA
2009.30.40
2009.30.60
2204.21.30 MX
2204.21.50 MX
2204.21.80 MX
2204.29.20
2204.29.40 MX
2204.29.60
2204.29.80 MX
2921.19.10 * CA
2933.59.32 MX
2933.90.87 MX
3808.30.50 MX
3920.10.00 CA
3921.90.50 CA
4421.90.40 *
5208.32.30
5404.10.80 *
5407.20.00 *
5501.20.00 MX
5503.20.00 MX
5506.20.00
5515.11.00
5604.90.00 *
5605.00.00 MX
5607.50.20 *
5607.50.40 *
5801.21.00
5801.22.00 MX
5801.23.00
5801.24.00
5903.90.25
6203.11.10
6203.11.20
6203.42.10 CA
6203.42.20 CA
6203.42.40
6204.11.00
6204.62.10 CA
6204.62.20 CA
6204.62.30 CA
6204.62.40
6215.10.00
6302.60.00 * CA
6302.91.00 *
6303.11.00 CA
6307.90.89 *
6402.19.10
6402.19.30 CA
6402.19.50
6402.19.70
6402.19.90
6403.19.15
6403.19.45
6403.19.60
6403.51.60 *
6403.51.90
6403.59.60 *
6403.59.90
6403.91.60 *
6403.91.90
6403.99.60 *
6403.99.75
6403.99.90
6404.11.20 MX
6404.11.90 MX
6404.19.80
6404.19.90 CA
6815.99.40 * CA
6911.10.10 MX
6911.10.80 MX
6912.00.20 MX
6912.00.39 MX
6912.00.45 MX
6912.00.48 MX
6914.90.00 * CA
7005.21.10 MX
7005.21.20 MX
7005.29.05 MX
7005.29.15 MX
7007.11.00 CA
7007.21.10 CA
7007.21.50 CA
7009.91.10 CA
7009.91.50 CA
7318.15.20 *
7318.15.40 *
7318.15.50 * CA
7318.15.60 *
7318.15.80 *
7321.11.10 CA
7321.11.60 CA
7321.90.60 CA
7508.00.10 * CA
7508.00.50 * CA
7901.12.10
7901.12.50 CA
8108.90.30 * CA
8213.00.90 MX
8418.21.00 CA
8418.30.00 CA
8418.40.00 CA
8418.91.00 CA
8418.99.40 CA
8418.99.80 CA
8450.11.00 CA
8450.20.00 * CA
8450.90.20 * CA
8450.90.40 * CA
8450.90.60 * CA
8536.50.80 *
8714.91.30 MX
8714.91.50 MX
8714.91.90 MX
8714.93.10 CA
8714.93.20 CA
8714.93.30
8714.93.60 CA
8714.93.80 CA
8714.95.00
8714.96.10
8714.96.50 CA
8714.96.90
8714.99.10 CA
8714.99.50 CA
8714.99.90
9107.00.40 * CA
9107.00.80 * CA
9114.90.30 * CA
9114.90.50 * CA
9603.29.40 CA

9603.29.80 CA
9603.40.40 CA
9603.50.00 CA

Annex II

Subheadings in the Tariff Schedule of the General Import Duty Act of Mexico (Tarifa de la Ley del Impuesto General de Importacion) containing products to be considered for accelerated removal of the duty on goods originating in the United States or Canada under the Norfh American Free Trade Agreement (NAFTA).

[Except as noted, all goods originating in the United States or Canada that are provided for in the subheadings listed below will be considered for accelerated removal of the Mexican import duty under the NAFTA. If the subheading is followed by the letters "US", consideration of accelerated duty removal will be limited to goods only originating in the United States. Similarly, if the subheading is followed by the letters "CA", consideration will be limited to goods only originating in Canada. An asterisk indicates that only certain products within the subheading will be considered. Information on obtaining a list of the specific products is contained in the body of this notice.]

0406.10.01 * US
0701.90.99
0710.10.01
0710.80.04 US
0710.90.99 US
0712.10.01
0713.33.02
0805.40.01 US
1105.10.01
1105.20.01
1108.13.01
1901.90.99 * US
2001.90.01 US
2001 90.02 US
2002.90.99 US
2004.10.01
2005.20.01 US
2005.60.01 US
2005.90.01 US
2005.90.99 US
2008.19.99 *
2009.20.01 US
2009.30.02 US
2009.30.99 US
2204.10.01 US
2204.21.01 US
2204.21.01 US
2204.21.02 US
2204.21.03 US
2204.21.99 US
2204.29.99
2204.30.01 US
2208.20.02
2208.20.03
2208.20.99
2208.90.04 US
2837.11.01
2903.40.04
2905.16.02
2921.19.07
2921.21.01
2921.29.01
2921.29.02
2932.29.99 *
2932.59.06
2933.90.57
2935.00.28
2935.00.99 *
2936.27.01
2936.28.01
2937.99.09
2941.30.01
2941.90.16
3702.31.01
3702.41.01
3702.53.01
3702.54.01
3702.55.01
3702.92.01
3702.94.01
3808.30.02
3808.30.99
3921.90.08
4407.10.01 *
4421.90.99 *
4808.30.02 *
4809.90.01
4811.90.09
5208.32.01 *
5404.10.99 * CA
5404.20.01
5501.20.01
5501.20.02
5501.20.03
5501.20.99
5503.20.01
5503.20.02
5503.20.03
5503.20.99
5506.20.01
5515.11.01
5604.90.03
5604.90.04
5605.00.01
5607.50.01
5801.21.01
5801.22.01
5801.23.01
5801.24.01
5903.90.02
6203.11.01
6203.42.01
6203.42.02
6203.42.99
6204.11.01
6204.62.01
6204.62.99 CA
6215.10.01
6302.60.01 * CA
6302.91.01 *
6303.11.01 CA
6307.90.01
6402.19.99
6403.51.01 *
6403.59.99 *
6403.91.01 *
6403.99.99 *
6504.11.01 * US
6404.19.19 *
6911.10.01 US
6912.00.01
6912.00.99
7003.19.01
7003.19.99
7005.10.01
7005.21.01
7005.21.02
7005.21.99
7005.29.01
7005.29.02
7005.29.03
7005.29.99
7006.00.01
7006.00.02
7006.00.03
7006.00.04
7006.00.99
7007.11.02
7007.11.03
7007.11.99
7007.19.01
7007.19.99
7007.21.01
7007.21.04
7007.21.99
7007.29.99
7008.00.01
7009.91.01
7009.91.99
7320.20.01 * US
7320.20.03 * US
7321.11.01
7321.11.02
7321.11.99
7321.90.03
7321.90.06
7321.90.99
7326.20.99 * US
7508.00.99 *
7901.12.01
8108.90.99 *
8213.00.01
8415.10.01
8418.10.01
8418.10.02
8418.21.01
8418.30.01
8418.30.02
8418.30.03
8418.30.05
8418.30.99
8418.40.01
8418.40.02
8418.40.03
8418.40.04
8418.40.99
8418.99.03
8418.99.09
8418.99.12
8418.99.99 *
8419.31.99 *
8419.90.99 *
8422.11.01 US
8422.90.04 US
8422.90.05 US

8422.90.06 US
8424.30.01
8429.59.01
8431.41.01*
8431.41.02*
8431.41.03*
8431.41.99*
8431.49.01*
8431.49.02*
8431.49.99*
8450.11.01
8450.11.02
8450.20.01
8450.90.01 *
8450.90.02 *
8450.90.99 *
8451.21.01 US
8451.21.99 US
8454.30.01
8462.21.05
8479.81.01
8485.90.08
8514.30.02
8514.90.02
8516.60.02
8516.90.11
8516.90.12
8516.90.13
8536.50.01 *

Annex III

Subheadings in the Customs Tariff of Canada Containing products to be considered for accelerated removal of the duty on goods originating in the United States or Mexico under the North American Free Trade Agreement (NAFTA).

[Except as noted, all goods originating in the United States or Mexico that are provided for in the subheadings listed below will be considered for accelerated removal of the Canadian import duty under the NAFTA. If the subheading is followed by the letters "MX", consideration of accelerated duty removal will be limited to goods only originating in Mexico. Similarly, if the subheading is followed by the letters "US", consideration will be limited to goods only originating in the United States. An asterisk indicates that only certain products within the subheading will be considered. Information on obtaining a list of the specific products is contained in the body of this notice.]

0701.90.00 MX
0710.10 00 MX
0712.10.00 MX
1105.10.00 MX
1105.20.00 MX
1108.13.00 MX
2004.10.00 MX
2008.19.90 * US
2204.29.10
2903.40.00 * MX
2905.16.00 * MX
2921.19.00 *
2921.21.00 * MX
2921.29.00 * MX
2932.29.00 * MX
2933.59.00 * MX
2933.90.00 * MX
2935.00.00 * MX
2941.30.00 * MX
2941.90.00 * MX
3921.90.90 *
4421.90.40 *
4809.90.90 * MX
5208.32.90 *
5404.10.90 *
5407.20.00 *
5501.20.00 MX
5503.20.00 MX
5506.20.00
5515.11.00
5604.90.00 *
5605.00.00 MX
5607.50.10 *
5607.50.20 *
5801.21.00
5801.22.10 MX
5801.22.90 MX
5801.23.10
5801.23.20
5801.24.00
5903.90.20 *
6203.11.00
6203.42.00
6204.11.00
6204.62.00
6215.10.00
6302.60.00 *
6302.91.00 *
6303.11.00
6307.90.92 *
6307.90.99 *
6402.19.10 US
6402.19.90
6403.19.10 US
6403.19.20
6403.19.90
6403.51.00 *
6403.59.00 *
6403.91.00 *
6403.99.10 *
6403.99.90 *
6404.19.10 *
6404.19.90 *
6815.99.91 * US
6815.99.99 * US
6912.00.00 MX
6914.90.00 *
7007.11.11
7007.11.19 US
7007.11.30
7007.19.00 MX
7007.21.11
7007.21.19 US
7007.21.30 US
7009.91.00
7318.15.00 *
7321.11.11 MX
7321.11.19 MX
7321.11.90 *
7321.90.10 MX
7321.90.20 *
7321.90.30
7321.90.40
7391.90.51 MX
7391.90.52 MX
7391.90.53 MX
7391.90.59 MX
7508.00.20 *
7508.00.90 *
8108.90.00 *
8213.00.20 US
8213.00.30 US
8418.21.10
8418.21.90
8418.30.00
8418.40.00
8418.91.10 * US
8418.91.20 US
8418.99.11 *
8418.99.19 *
8418.99.31
8418.99.39
8419.90.80 * MX
8424.30.00 MX
8431.41.90 * MX
8431.49.90 * MX
8485.90.90 * MX
8514.30.10 * MX
8514.30 90 * MX
8514.90.91 * MX
8514.90.92 * MX
8516.60.20
8516.90.51
8516.90.52
8516.90.53
8516.90.59
8536.50.80 *
8536.50.91 *
8536.50.99 *
8714.93.00
8714.95.00
8714.96.00
8714.99.10 US
8714.99.20
9107.00.10 *
9107.00.20 *
9107.00.90 *
9114.90.20 * US
9114.90.30 * US
9114.90.90 * US
9603.29.00
9603.40.90
9603.50.90

[FR Doc. 94–12473 Filed 5–20–94; 8:45 am]
BILLING CODE 3190–01–P–M

DEPARTMENT OF TRANSPORTATION

[Ref. Docket 43232]

Office of the Secretary

Prohibition on the Sale of Passenger Air Transportation to Lebanon

Notice reaffirming the restriction prohibiting the sale, in the United States, of passenger air transportation to Lebanon. We are publishing this notice in its entirety as an appendix to this document.

DATE: Issued in Washington, DC, May 17, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

Notice

As a result of foreign air carriers adding service to Beirut, Lebanon, over the past few years, the Department has increased its monitoring activities relating to the air transportation restrictions put in place with regard to Lebanon in 1985. This has led to the issuance of a number of consent cease and desist orders and the assessment of substantial civil penalties for violations of these restrictions. Investigations of possible violations by a number of other airlines and travel agents are continuing.

By this Notice, we once again take the opportunity to reaffirm the restrictions that were put in place as a result of security concerns by Department Order 85–7–45, as modified by Order 92–8–25. Specifically, it is a condition of all certificates held by U.S. air carriers, all permits held by foreign air carriers and all exemptions from sections 401 and 402 of the Federal Aviation Act that the holder shall not sell in the United States any passenger transportation by air which includes any type of stop in Lebanon. The Department has consistently interpreted this restriction to apply to all sales activities in the United States by air carriers and their agents, including travel agents, consolidators, wholesalers and other third parties, that are utilized to transact such sales. This prohibition includes any activity undertaken in the United States that effectuates the sale of such air transportation and includes, but is not limited to, reservations made in the United States by any air carrier or its agents by mail, overnight express, courier, telephone, facsimile or other means to any air carrier or its agents, including travel agents, consolidators, wholesalers and other third parties, located outside the United States that results in the issuance of a passenger ticket or the confirmation of a reservation for passenger air transportation to Lebanon.

The fact that a ticket for air transportation is issued outside the U.S. is not dispositive of whether the sale of that ticket was made in the U.S. Thus, for example, a travel agent receiving reimbursement in the U.S. for a passenger ticket for air transportation service to Lebanon, who obtains that ticket through an airline or consolidator in Canada, would be in violation of the Department's Lebanon restrictions. Likewise, an airline that accepts a U.S. telephone purchase in Canada for air transportation to Lebanon, with ticket delivery in the U.S., would also violate our Lebanon restrictions. These agents and airlines would be subject to the imposition of substantial civil penalties. Moreover, criminal prosecution could result from knowing and willful violations of the law.

This Notice shall be published in the **Federal Register** and shall be served on all certificated air carriers, all foreign air carriers, the United States Departments of State and Justice, the Air Transport Association, the International Air Transport Association, the National Air Carrier Association, the American Society of Travel Agents, and the Association of Retail Travel Agents.

By:

Dated: May 17, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 94–12513 Filed 5–20–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at James M. Cox-Dayton International Airport, Vandalia, OH, and Use PFC Revenue At James M. Cox-Dayton International Airport, Vandalia, OH, et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at James M. Cox-Dayton International Airport and use PFC revenue at James M. Cox-Dayton International Airport and Dayton General Airport South under the provisions of the Aviation Safety and Capacity Expansion Act of 1900 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 22, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roy Williams, Director of Aviation of the city of Dayton, Ohio, at the following address: James M. Cox-Dayton International Airport, Terminal Building, Vandalia, Ohio 45377.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Dayton, Ohio under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dean C. Nitz, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a passenger facility charge (PFC) at James M. Cox-Dayton International Airport and use the revenue from a PFC at James M. Cox-Dayton International Airport and Dayton General Airport South under the provisions of the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 22, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of Dayton, Ohio, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 23, 1994.

The following is a brief overview of the application.

Level of the Proposed PFC: $3.00.

Proposed Charge Effective Date: June 1, 1994.

Proposed Charge Expiration date: August 31, 2001.

Total Estimated PFC Revenue: $24,667,200.

Brief Description of Proposed Project(s):

Projects To Impose and Use PFC

James M. Cox-Dayton International Airport

Install FAR part 139 Signs.

Airfield Pavement Evaluation.

Runway, Taxiway, and Apron Rehabilitation.

Aircraft Parking Apron Expansion and Improvements.

Taxiway 'W' Extension.

Purchase Replacement Emergency Power Generator.

Scan Surface Monitoring System Upgrade.

Emery Cargo Apron Purchase.

Sand Storage Building Purchase.

Airfield Snow Removal and Fire Fighting Equipment Purchase.

Security Vehicle and Security Gate Improvements.
Land Acquisition and Relocation.
Airport Master Plan and FAR part 150 Study Updates.
FAA Tower Order Environmental Assessment.
Water System Improvements.
Multi-User Flight Information Display System Installation.
Concourse and Ticketing Area Renovations.

Dayton General Airport South

Master Plan Update.
Runway, Taxiway, and Aircraft Parking Apron Rehabilitation.

Projects Only to Impose A PFC

James M. Cox-Dayton International Airport

Planning for Extension of Runway 6R–24L.
Central Aircraft Deicing Area.
Runway Deicing Fluid Storage Tank.

Class or Classes of Air Carriers Which the Public Agency Has Requested Not Be Required To Collect PFCs: Air Taxi/Commerical Operators.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Division of Aviation, James M. Cox-Dayton International Airport.

Issued in Des Plaines, Illinois, On May 12, 1994.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 94–12533 Filed 5–20–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Michiana Regional Transportation Center, South Bend, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Michiana Regional Transportation Center under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 22, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John C. Schalliol, Director, Michiana Regional Transportation Center of the St. Joseph County Airport Authority at the following address: St. Joseph County Airport Authority, Michiana Regional Transportation Center, 4477 Terminal Drive, South Bend, Indiana 46628.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the St. Joseph County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018, (708) 294–7526. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Michiana Regional Transportation Center under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 6, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by St. Joseph County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 26, 1994.

The following is a brief overview of the application.

Level of the Proposed PFC: $3.00.
Proposed Charge Effective Date: September 1, 1994.
Proposed Charge Expiration Date: December 31, 2003.
Total Estimated PFC revenue: $9,185,403.
Brief Description of Proposed Project(s):

a. Terminal Building Expansion and Railroad Station.
b. Rail Spur and Platform.
c. Land Acquisition for Runway 9R Protection Zone.
d. Construction of Runway 9L–27R with Parallel Taxiway.
e. Perimeter Security Fencing.
f. Loading Bridge and Elevation Transition Facility.
g. Perimeter Road Modifications for Railroad Spur Construction.
h. Rehabilitation of Runway 9R–27L and Portions of Parallel Taxiway B.
i. Installation of FAR part 139 Airport Guidance Signs.
j. Installation of FAR § 107.14 Security Access Control System.
k. Install Surface Scan System Enhancement.

1. Acquisition of Large, High-Speed Snowblower

Class or Classes of Air Carriers Which the Public Agency Has Requested Not Be Required To Collect PFCs: On-demand FAR part 135 Air Taxi Operators with less than 15 seats.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the St. Joseph County Airport Authority.

Issued in Des Plaines, Illinois on May 12, 1994.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 94–12532 Filed 5–20–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Washington, Kent, and Providence Counties, RI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed construction of a third track for freight rail service between Central Falls and North Kingston, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Gordon G. Hoxie, Division Administrator, Federal Highway Administration, 380 Westminster Mall, room 547, Providence, Rhode Island, Telephone: (401) 528–4541, or Thomas J. Queenan, Project Manager, Rhode Island Department of Transportation, Two Capitol Hill—room 372,

Providence, RI 02903, telephone: (401) 277–2694.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Rhode Island Department of Transportation (RIDOT), will prepare an environmental impact statement (EIS) on a proposal to improve freight rail service along the Northeast Corridor (NEC) between Central Falls and North Kingston, Rhode Island. The proposed improvement would involve the construction of a new third track parallel to the NEC mainline along the entire corridor for a distance of about 35 kilometers (22 miles).

Improvements to the corridor are considered necessary to alleviate impacts to freight rail service resulting from the proposed Amtrak Northeast Corridor electrification project. Construction of electrification facilities and associated changes in intercity passenger operations are expected to reduce vertical and horizontal clearances at overhead bridges along the corridor, limit daytime freight movements to existing levels, and restrict additional freight movements to nighttime hours. Alternatives under consideration include (1) Taking no action; (2) construction of a continuous third track parallel to the NEC mainline including ancillary modifications to overhead bridge structures; and (3) other reasonable alternatives identified during the scoping process.

Public scoping meeting(s) will be held in Cranston, RI between June and July 1994. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number *20.205*, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and other activities apply to this program)

Issued on: May 17, 1994.

Gordon G. Hoxie,

Division Administrator, Providence, Rhode Island.

[FR Doc. 94–12487 Filed 5–20–94; 8:45 am]

BILLING CODE 4910–22–4

National Highway Traffic Safety Administration

[Docket No. 93–67; Notice 2]

Sekurit Glas Union GmbH; Grant of Petition for Determination of Inconsequential Noncompliance

Sekurit-Glas Union GmbH (hereinafter referred to as "Sekurit"), a division of VEGLA GmbH, of Aachen, Germany, determined that it manufactured glazing which was installed in buses imported to the United States of America (USA) which does not comply with the marking requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials" (49 CFR 571.205), and filed an appropriate report pursuant to 49 CFR Part 573.

As a result of these findings, Sekurit also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on September 30, 1993 (58 FR 51126) and an opportunity afforded for comment.

Standard No. 205, which incorporates, by reference, American National Standard Institute's "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" Z-26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26.1), specifies that, with certain exceptions, glazing materials for use in motor vehicles shall conform with Paragraphs S5, "Requirements," S6, "Certification and Marking," and ANS Z26.1.6, "Marking of Safety Glazing Materials." Accordingly, all safety glazing materials shall be legibly and permanently marked in letters and numerals, at least 0.070 inch (1.78mm) in height, with the words "American National Standard" or the characters AS, and, adjacent to those characters, the numeral that identifies the type of construction of the glazing materials.

Sekurit's noncompliant glazings were mounted in front doors of buses manufactured by Karl Kässbohrer GmbH, a customer of Sekurit, and exported to the USA. These door glazings were erroneously marked AS3, instead of AS2. This type of glazing has a regular light transmittance over 70 percent, so that its identification as an AS3 item was irrelevant.

The total number (worldwide) of vehicles equipped with mismarked glazings was 6000. The percentage of vehicles in North America, i.e., where mismarking by USA standards is relevant, was 2.33 percent. That figure is based on 140 vehicles with a total of 280 mismarked glazings (140 left and 140 right side).

On March 2, 1992, Sekurit was notified by their customer, Kässbohrer, that the mismarking had been noticed by a Department of Transportation inspector in New Jersey at a vehicle approval registration.

The mismarked glazing is a 17.0 mm nominal thickness, class 1, multiple glazed unit consisting of one sheet of "AS2", M–320" clear tempered float safety glass and one sheet of "AS2, M–24100" green tinted tempered float safety glass with an AirGap of 6.0–12.0 mm, SEKURIT SAINT-GOBAIN, "DOT–27, AS3, M–4412." According to the petitioner, this glazing can be used anywhere in a motor vehicle except the windshield.

Sekurit supported its petition for inconsequential noncompliance by stating that the item in question should be marked—and has been so since March 1993—AS2 and not AS3, as it complies with requirements of Test 1, "Light Stability," and Test 2, "Luminous Transmittance" of ANS Z26.1–1983, as it shows values of light transmission over 70 percent. Double glazings of class 1 complying with these requirements may be mounted anywhere in a vehicle except windshields. Sekurit further stated that by mismarking AS2 glazings as AS3 they prejudiced the use of the mismarked glazings by indicating a restriction in permitted locations that was irrelevant. The DOT–27 M4412 complies in all ways except the mark "AS3," with safety requirements requisite at locations such as front door windows of buses.

Several measures have been taken by Sekurit to remedy the error of mismarked glazings:

—Applied for revision of ETL Report #495331 of December 11, 1989 to have the correct test reference and marking included. Revised May 12, 1993; ETL was asked as an official laboratory to perform another series of tests on samples of a recent production campaign, in order to check the continuous conformity of the product to AS2 requirements. ETL test report #529002 of May 19, 1993 verifies this.

—Revisions from ETL Report #495331 were registered at American Association of Motor Vehicle Administrators (AAMVA), who consequently adjusted their Notice #900342/930515.

—Customer was supplied with two glazings (1 left side and 1 right side)

with correct marking for immediate check, comparison and replacement.
—Prepared and introduced correct marking
—Checked light transmission in our [Sekurit] internal laboratory
—Informed the European authorities; received final statement of inconsequential mismarking on May 10, 1993

Sekurit believes that mismarking of AS2 glazings with AS3 designation is inconsequential as it relates to motor vehicle safety and therefore petitioned for exemption from the notification and remedial portions of the Act.

No comments were received on the petition.

NHTSA is satisfied that the performance requirements for AS2 glazing are met by the misidentified materials. However, there are considerations that go beyond compliance with performance requirements. NHTSA recalls Docket IP80–3 in which Volkswagen omitted to mark certain windshields with the required AS1 designation. Two comments were received, both from States, who commented that the lack of marking would result in rejection under their inspection systems.

NHTSA observed that rejection puts the owner the burden of contacting Volkswagen, or of replacing the windshield before the State would again inspect the vehicle and authorize its continued operation on the roads. NHTSA found that "[t]he noncompliance has a direct impact upon the vehicle safety inspection process, diverting public resources with no corresponding safety benefit." Accordingly, it denied the petition.

Although Sekurit's is a case of mismarked side windows rather than an unmarked windshield, the considerations are similar. Here, the noncompliance was discovered by a State inspector, so that the impact upon the inspection process is actual rather than theoretical. NHTSA consulted Kassbohrer of North America and found that it was willing to provide each of the bus owners with the noncompliant glazing with a letter noting the mismarking and averring as to its compliance otherwise with Standard No. 205. The letter, dated April 21, 1994, advises the recipient to keep it in the bus "in case a DOT inspector notices the incorrect mark." This letter should minimize the effect of the noncompliance upon the State inspection process, and affords a basis upon which NHTSA may grant the petition.

A further concern of NHTSA was whether, at the time of replacement, AS3 glazing might be installed instead of AS2. This possibility appears unlikely because local glass shops do not cut multiple glazed units of this type and only factory-made AS2 windows are used to fill replacement orders.

For the reasons stated above, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted. (15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on May 18, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–12534 Filed 5–20–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Performance Review Board; Appointment of Members

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: This notice announces the appointment of the members of the United States Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executives' performance appraisals and make recommendations regarding performance appraisals and performance awards.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Anne D. Scott, Acting Director, Office of Human Resources, United States Customs Service, Post Office Box 636, Washington, DC 20044; telephone (202) 634–5270.

Background

There are two (2) PRB's in the U.S. Customs Service.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals of senior executives rated by the Commissioner or Deputy Commissioner of Customs. The members are:

Daniel R. Black, Associate Director, Office of Compliance Operations, Bureau of Alcohol, Tobacco & Firearms
Guy P. Caputo, Deputy Director, U.S. Secret Service
John C. Dooher, Director, Washington Center, Federal Law Enforcement Training Center
Ray M. Rice, Assistant Director, Office of General Training, Federal Law Enforcement Training Center
Jay Weinstein, Assistant Inspector General, Audit, Inspector General Office

Performance Review Board 2

The purpose of this Board is to review the performance appraisals of all senior executives except those rated by the Commissioner or Deputy Commissioner of Customs. All are Assistant Commissioners or Regional Commissioners of the U.S. Customs Service. The members are:

Assistant Commissioners

Samuel H. Banks, Office of Commercial Operations
Charles W. Winwood, Office of Inspection and Control
Douglas M. Browning, Office of International Affairs
Walter B. Biondi, Office of Internal Affairs
Carlton L. Brainard, Office of Management
William F. Riley, Office of Information Management

Regional Commissioners

Philip W. Spayd, Northeast Region
Anthony N. Liberta, New York Region
Garnet J. Fee, North Central Region
J. Robert Grimes, South Central Region
Robert S. Trotter, Southwest Region.

Dated: May 17, 1994.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 94–12542 Filed 5–20–94; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

[Dept. Circ. 570, 1992 Rev., Supp. No. 16; 4–00236]

Surety Companies Acceptable on Federal Bonds: Commercial Casualty Insurance Company of Georgia

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued effective April 1, 1994, to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, on page 35789 to reflect this addition:

Commercial Casualty Insurance Company of Georgia *Business Address:* 160 Technology

Parkway, Norcross, GA 30092–2911. Telephone No. (404) 729–8101. *Underwriting Limitation b/:* $367,000. *Surety Lincenses c/ :* GA. *Incorporated In:* Georgia.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained for the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, Telephone (202) 874–6696.

Dated: May 16, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Services.

[FR Doc. 94–12448 Filed 5–20–94; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1993—Rev., Supp. No. 21; 4–00236]

Surety Companies Acceptable on Federal Bonds, Change of Name; Planet Insurance Company

Planet Insurance Company, a Wisconsin corporation, has formally changed its name to Reliance National Indemnity Company, effective March 31, 1994. The Company was last listed as an acceptable surety on Federal bonds at 57 FR 35811, July 1, 1993.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 of title 31 of the United States Code, to Reliance National Indemnity Company, Philadelphia, PA. This new Certificate replaces the certificate of Authority issued to the Company under its former name. The underwriting limitation of $6,615,000 established for the Company as of July 1, 1993, remains unchanged until June 30, 1994.

Certificates of Authority expire on June 30, each year, unless revoked prior to that dated. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, at page 35811 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6696.

Dated: May 16, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–12450 Filed 5–20–94; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1993—Rev., Supp. No. 18; 4–00236]

Surety Companies Acceptable on Federal Bonds, Change of Name; Transamerica Insurance Company

Transamerica Insurance Company, a California corporation, has formally changed its name to TIG Insurance Company, effective September 24, 1993. The Company was last listed as an acceptable surety on Federal bonds at 57 FR 35817, July 1, 1993.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 of title 31 of the United States Code, to TIG Insurance Company, Los Angeles, California. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $29,500,000 established for the Company as of July 1, 1993, remains unchanged until June 30, 1994.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, at page 35817 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6696.

Dated: May 16, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–12447 Filed 5–20–94; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1993—Rev., Supp. No. 19; 4–00236]

Surety Companies Acceptable on Federal Bonds, Change of Name; Transamerica Insurance Company of Michigan

Transamerica Insurance Company of Michigan, a Michigan corporation, has formally changed its name to TIG Insurance Company of Michigan, effective August 30, 1993. The Company was last listed as an acceptable surety on Federal bonds at 57 FR 35817, July 1, 1993.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 of title 31 of the United States Code, to TIG Insurance Company of Michigan, Battle Creek, Michigan. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $2,037,000 established for the Company as of July 1, 1993, remains unchanged until June 30, 1994.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, at page 35817 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6696.

Dated: May 16, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–12449 Filed 5–20–94; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Social Science Curriculum Fellowships for Russian University Teachers

ACTION: Notice—request for proposals.

SUMMARY: Prospective recipient will provide no fewer than ten research fellowships for Russian university teachers to pursue individual programs in social science fields in U.S. universities and research institutions in the academic year 1995–1996 in support of strengthened social science curricula in Russian higher education institutions. Participants should be teaching at the university level in social science fields, including but not limited to, political science, sociology, economics, law, and demography. Programs will include subject matter exposure, materials acquisition, scholarly networking, and orientation to current American approaches in these fields, especially empirical methods. Recipient organization is responsible for publicizing the program abroad, selecting the participants, placing participants in appropriate U.S. institutions, and for assuring appropriate supervision. Recipient is also responsible for all administrative arrangements, for program evaluation, and for establishing procedures for follow-up after participants return to their Russian universities.

Overall grant making authority for this program is contained in the Freedom Support Act. The funding authority for the program is appropriated under the Foreign Assistance Act 1994.

Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. It is expected that recipient will provide cash and/or in-kind cost sharing.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time, on Wednesday June 29, 1994. Faxed documents will not be accepted, nor will documents postmarked on June 29, 1994, but received at a later date. It is the responsibility of each assistance award applicant to ensure that the proposals are received by the above deadline. Grants should begin in the Fall of 1994.

ADDRESSES: The original and 8 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Reference: (E/AAS–94–02), Office of Grants Management, E/XE, room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Gretchen Christison at the U.S. Information Agency, Study of the U.S. Branch, E/AAS room 256, 301 4th Street SW., Washington, DC 20547 tel: (202) 619–4557 fax: (202) 619–6790 to request a detailed Application Package, which includes award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Study of the U.S. Branch or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity of American political, social, and cultural life. Academic programs under the authority of the Bureau must maintain their scholarly integrity and should meet the highest standards of academic achievement. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, gender, religion, geographic location, socio-economic status, and physical challenges.

Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The program seeks to increase and improve the quality of social science teaching in Russia. The program's immediate goal is to provide an opportunity for approximately ten qualified Russian university teachers to update and enhance their knowledge of their social science fields in support of revised and strengthened curricula.

Guidelines

The program is designed for Russian scholars who are teaching at the university level in social science fields including but not limited to, political science, sociology, economics, law, and demography. In the early stages of the program, the award recipient is responsible for publicizing the program, recruiting strong applicants and selecting the most qualified candidates. Participants should be chosen through a public, open competition which includes U.S. professional peer review for the final selection of participants. Selections should be made and announced in reasonable time for applicants to make plans for absence from their countries and to undertake departure formalities. USIA, the Study of U.S. Branch (E/AAS), and USIS Moscow should be informed of the final selection. Proposals should demonstrate extensive contacts with and knowledge of Russian universities to ensure that the best possible candidates are recruited and selected.

Award recipient will arrange appropriate placement in U.S. universities and research institutions for participants. To the extent possible, waivers of tuition fees should be procured.

Fellowships should be six to twelve months in duration. Family members may accompany recipients for part of the grant period, but grant monies must not be used to support the maintenance of or travel for dependents. The fellowships will provide for all the costs of the recipients. The dollar amount of the fellowship should be reduced in situations where Russian university salaries, transferable into U.S. dollars, continue to be received by the fellow while in the United States.

Award recipient will make all administrative arrangements, including travel, visa, disbursement of grant funds, insurance and related matters. The recipient should maintain contact with the participants and liaison with university hosts during the course of the grant to offer assistance with participant academic interests and administrative concerns such as housing, travel within the U.S., or emergency matters. It is expected that recipient organization will have substantive contact with university hosts to ensure that participants are able to make maximum use of institutional resources and facilities. To this end, it may prove useful for the recipient organization to encourage host institutions to designate specific faculty members to serve as mentors for the Russian participants.

Recipient will develop evaluation instruments and procedures to determine the participants' scholarly activity during the course of the grant, the adequacy of the stipend, and the adequacy of recipient and university administrative arrangements. Participants should also report on their general impressions of the U.S. and how they intend to apply the materials or new information gained during the research in their professional work in their own countries. The recipient will establish procedures for follow-up

communication with grantees to ascertain the application of their fellowship activity to their professional responsibilities, such as new publications, workshop leadership, new positions, or new course offerings stemming from their fellowship experience.

Proposed Budget

Applicants must submit a comprehensive line item budget for which specific details are available in the Application Package. A USIA-funded budget will not exceed $250,000. The recipient organization is expected to provide significant cash and/or in-kind cost-sharing.

Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000.

The line-item budget is divided into administrative and program sections. The line-item budget should include the categories listed in the Budget Guidelines found in the Application Package. An addendum should provide details about the budget.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission and program goals.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate appropriate content and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider past performance of prior grantees and the demonstrated potential of new applicants.

7. *Follow-on Activities:* Proposals should provide a plan for continued cost-effective follow-on activity which insures that USIA-supported programs are not isolated venues.

8. *Evaluation Plan:* Proposals should provide a plan for evaluation by the recipient institution.

9. *Cost-Effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both the organization and the program activities.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 15, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: May 16, 1994

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–12470 Filed 5–20–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59 No. 98
Monday, May 23, 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).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-17]

TIME AND DATE: May 26, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-651 (Final) (Silicon Carbide from China)—briefing and vote
5. Outstanding action jacket:
   1. ID-94-010; Inv. No. 332-350 (Monitoring of U.S. Imports of Tomatoes).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: May 18, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-12641 Filed 5-19-94; 2:28 pm]

BILLING CODE 7020-02-P

NATIONAL WOMEN'S BUSINESS COUNCIL

ACTION: Notice of meeting.

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100-533 as amended, the National Women's Business Council announces a forthcoming Council Meeting. The meeting will cover action items to be taken by the National Women's Business Council in Fiscal Year 1994 including but not limited to increasing procurement opportunities and access to capital for women business owners.

DATE: June 2, 1994, 4 p.m. to 5 p.m.

ADDRESS: Hilton Hotel and Towers, 720 S. Michigan Avenue, Chicago, Illinois.

STATUS: Open to the public.

CONTACT: For further information contact Amy Millman, Executive Director or Juliette Tracey, Deputy Director, National Women's Business Council, 409 Third Street, SW., suite 5850, Washington, DC 20024, (202) 205-3850.

Gilda Washington,

Administrative Officer, National Women's Business Council.

[FR Doc. 94-12619 Filed 5-19-94; 11:49 am]

BILLING CODE 6820-AB-M

TENNESSEE VALLEY AUTHORITY

Meeting No. 1466

TIME AND DATE: 10 a.m. (EDT), May 25, 1994.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on April 26, 1994.

Discussion item

1. Integrated Resource Planning.

Action Items

New Business

E—Real Property

E1. Release of a Restrictive Covenant Affecting Approximately 39 Acres of Land in Jefferson County, Illinois, to the State of Illinois, Department of Conservation.

E2. Release of a Restrictive Covenant Affecting Approximately 20.99 Acres of Land on Wheeler Reservoir in Morgan County, Alabama, to the City of Decatur.

E3. Amendment to the Kentucky Reservoir Plan to grant a 25-Year Easement Affecting Approximately 6.8 Acres of Land in Marshall County, Kentucky, to the Kentucky Department of Fish and Wildlife Resources.

E4. Sales of Noncommercial, Nonexclusive Permanent Easements Affecting 0.32 Acre of Tellico Lake Shoreline in Loudon and Monroe Counties, Tennessee.

F—Unclassified

F1. Revisions in Organizational Responsibilities for TVA's Security Clearance and Classified Information Program.

F2. Contract with Babcock and Wilcox for the Cumberland Fossil Plant, Units 1 and 2, Subject to Final Review Prior to Execution.

F3. Contract with F.E. Moran, Inc., Special Hazard Systems for a System-Wide Fire Protection Upgrade, Subject to Final Review Prior to Execution.

F4. Filing of Condemnation Cases.

Information Items

1. Public Auction Sale of Beaver Creek Reservoir Land.
2. Public Auction Sale of Clear Creek Reservoir Land.

CONTACT PERSON FOR MORE INFORMATION: Ron Loving Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898-2999.

Dated: May 18, 1994.

William L. Osteen,

Associate General Counsel and Assistant Secretary.

[FR Doc. 94-12595 Filed 5-19-94; 9:13 am]

BILLING CODE 8120-08-M

federal register

Monday
May 23, 1994

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 173 and 573
Secondary Direct Food Additives Permitted in Food for Human Consumption; Food Additives Permitted in Feed and Drinking Water of Animals; Aminoglycoside 3′-Phosphotransferase II; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 173 and 573

[Docket No. 93F-0232]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Food Additives Permitted in Feed and Drinking Water of Animals; Aminoglycoside 3'-Phosphotransferase II

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aminoglycoside 3'-phosphotransferase II (APH(3')II) as a processing aid in the development of new varieties of tomato, oilseed rape, and cotton. APH(3')II is a protein encoded by the kanamycin resistance (*kan*^{r}) gene. This action is in response to a petition filed by Calgene, Inc.

DATES: Effective May 23, 1994; written objections and requests for a hearing by June 22, 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: Nega Beru, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-254-9523.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Regulatory History

In accordance with 21 CFR 10.85, Calgene, Inc., submitted to FDA on November 26, 1990, a request for advisory opinion regarding whether the *kan*^{r} gene, a selectable marker, may be used in the production of genetically engineered tomato, cotton, and oilseed rape plants intended for human food and animal feed uses (*kan*^{r} Gene: Safety and use in the production of genetically engineered plants, Docket Number 90A-0416). In the **Federal Register** of May 1, 1991 (56 FR 20004), FDA announced that the request had been received and solicited comments from interested persons. The data submitted to the agency with the request for advisory opinion and the comments received were made available to the public at the Dockets Management Branch.

Subsequent to the submission of the request for advisory opinion, FDA published its "Statement of Policy: Foods Derived From New Plant Varieties" (the 1992 policy statement) in the **Federal Register** of May 29, 1992 (57 FR 22984). This policy statement clarified FDA's interpretation of the Federal Food, Drug, and Cosmetic Act (the act) with respect to human foods and animal feeds derived from new plant varieties, including plants developed by new methods of genetic modification such as recombinant deoxyribonucleic acid (DNA) techniques.

In the 1992 policy statement, FDA stated that the postmarket authority under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) would continue to be the primary legal tool for ensuring the safety of whole foods derived from genetically modified plants. FDA also noted that under the statutory definition of "food additive" in section 201(s) of the act (21 U.S.C. 321(s)), the transferred genetic material and the intended expression products could be subject to regulation as food additives, if such material or expression products were not generally recognized as safe (GRAS) (57 FR 22984 at 22990). FDA further stated that the agency would use its food additive authority to the extent necessary to ensure public health protection (such as when an intended expression product in a food differs significantly in structure, function, or composition from substances found currently in food) (57 FR 22984 at 22990).

The 1992 policy statement specifically discussed selectable markers that provide antibiotic resistance in product selection and development. With such markers, both the antibiotic resistance gene and the gene product, unless removed, are expected to be present in foods derived from such plants. FDA stated:

> Selectable marker genes that produce enzymes that inactivate clinically useful antibiotics theoretically may reduce the therapeutic efficacy of the antibiotic when taken orally if the enzyme in the food inactivates the antibiotic. FDA believes that it will be important to evaluate such concerns with respect to commercial use of antibiotic resistance marker genes in food, especially those that will be widely used. (See 57 FR 22984 at 22988.)

Subsequently, in January 1993, Calgene requested that FDA convert its request for advisory opinion to a food additive petition under section 409 of the act. FDA then announced in the **Federal Register** of July 16, 1993 (58 FR 38429), that a food additive petition (FAP 3A4364) had been filed by Calgene, Inc., 1920 Fifth St., Davis, CA 95616, proposing that the food additive regulations be amended to provide for the safe use of APH(3')II as a processing aid in the development of new varieties of tomato, oilseed rape, and cotton.

After completing its review of the data submitted by Calgene, FDA convened a public meeting of its Food Advisory Committee on April 6 through 8, 1994, to undertake a scientific discussion of

the agency's approach to evaluating the safety of whole foods produced by new biotechnologies; a genetically modified tomato developed by Calgene containing the *kan*^{r} gene served as an example and focus of the discussion. The membership of the standing committee was supplemented with temporary members and consultants to the committee, representing scientific disciplines appropriate to the evaluation of foods derived from new plant varieties developed using recombinant DNA techniques.

At the meeting, Calgene presented a summary of the data they considered adequate to show safety of the tomato, and FDA presented its evaluation of the data. The committee was asked to comment on the approach used by FDA to evaluate whole foods and specifically, on the approach used for the Calgene tomato (Ref. 1). During committee discussion of the Calgene and FDA presentations, the committee members generally expressed the view that the approach used by FDA to evaluate the safety of the tomato, including the safety of the *kan*^{r} gene, was appropriate and that all relevant scientific questions had been adequately addressed.

In regard to the use of the *kan*^{r} gene, Calgene and the agency presented, and the committee discussed, such issues as the potential allergenicity of APH(3')II and the potential for ingested APH(3')II to inactivate orally administered antibiotics. Most of the discussion concerning the *kan*^{r} gene focused on the potential transfer of the gene to microorganisms in the gastrointestinal (GI) tract or in the environment. In evaluating Calgene's food additive petition for the use of the *kan*^{r} gene product, APH(3')II, in the development of new varieties of tomato, oilseed rape, and cotton, FDA has considered the committee's discussions and recommendations on this subject, which are summarized in section III.B.3. of this document.

B. Scope of the Regulation

Having completed its evaluation and having considered the deliberations of the Food Advisory Committee, the agency is amending the food additive regulations to permit the use of APH(3')II in the development of genetically modified tomatoes, oilseed rape, and cotton intended for food use. Only the translation product of the *kan*^{r} gene, APH(3')II, and not the gene itself, is being regulated as a food additive. As the 1992 policy statement indicated, FDA does not anticipate that transferred genetic material (deoxyribonucleic acid (DNA)) would itself be regulated as a food additive (57 FR 22984 at 22990). DNA is present in the cells of all living organisms, including every plant and animal used for food by humans or animals, and is efficiently digested (Ref. 2). In this respect, the DNA that makes up the *kan*^{r} gene does not differ from any other DNA and does not itself pose a safety concern as a component of food.

This final rule is being promulgated after consideration of the issues relating to the safety of the use of APH(3')II in the selection of transgenic plants. In addition, as noted above, because of the property of the *kan*^{r} gene to confer antibiotic resistance, the agency has considered the possibility that the gene might be transferred to other organisms (discussed in section III.B. of this document).

Potential safety issues specific to particular food products that contain the *kan*^{r} gene are not addressed by the agency in this document because such issues are beyond the scope of this rulemaking. For example, issues associated with other co-transferred DNA sequences, including other genes intended to impart specific traits, and issues related to potential genetic instability are not addressed because such issues will vary with specific products.

Developers of new plant varieties are responsible for addressing potential safety issues associated with specific food products resulting from the transfer of genetic materials and for ensuring the safety of the food products that they market. The policy statement contains a "Guidance to Industry" section (57 FR 22984 at 22991) that outlines an approach for the safety evaluation of foods derived from transgenic plants and suggests that the agency be consulted, as needed, to resolve critical issues.

As noted, issues related to genetic instability are not addressed because such issues are not unique to the *kan*^{r} gene but apply to any transferred genetic material irrespective of the transfer techniques used. Genetic instability could arise as a result of insertion of multiple copies of a given construct, especially if insertion occurs at multiple loci. Recombinations of the transferred DNA could cause deletions, duplications, or rearrangements within the plant genome (Ref. 3). Hence, in the 1992 policy statement, the agency noted that the genetic stability of a new plant variety is an important safety consideration and further stated that, "Factors that favor stability include a minimum number of copies of the introduced genetic material, and insertion at a single site." (57 FR 22984 at 23004).

In developing new plant varieties, developers are therefore responsible for following good manufacturing and good agricultural practices to ensure that they have developed a genetically stable transgenic plant. As a practical matter, this would ordinarily include using such techniques as segregation and Southern blot analysis to ensure that new plant varieties chosen for development have the new genetic material inserted into a single locus and that the number of copies of inserted DNA at a given site is limited to the minimum sufficient to achieve the intended effect.

C. Determination of Safety

Under section 409(c)(3)(A) of the act, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d sess. (1958)). FDA has incorporated this concept of safety into its food additive regulations. Under 21 CFR 170.3(i), a food additive is "safe" if "there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The agency has reviewed the data and studies submitted in the request for advisory opinion, material that was submitted subsequent to the conversion of the request for advisory opinion to a food additive petition, the deliberations of the Food Advisory Committee that took place at the April 1994 meeting, as well as other information in its files. In addition, the agency has considered the comments that were received in response to the **Federal Register** notice announcing receipt of the request for advisory opinion. The comments are addressed in section IV. of this document. As discussed below, FDA has concluded, based upon its review, that the use of aminoglycoside 3'-phosphotransferase II is safe for use as a processing aid in the development of new varieties of tomato, oilseed rape, and cotton intended for food use.

II. Use of the *kan*^{r} Gene As a Selectable Marker in Transgenic Plants

A Background

Developers have for many years used plant breeding techniques to introduce desirable genetic traits into new varieties that can be used in agriculture. Traditionally, breeders have relied on selection of mutants and on hybridization between different varieties of the same species to achieve this goal. More recently, recombinant DNA techniques (commonly referred to as "genetic engineering" techniques) have come into use to generate new plant varieties with desirable characteristics. Recombinant DNA techniques involve the isolation, and subsequent introduction into a host plant, of discrete DNA segments containing the gene(s) of interest. This introduction of exogenous DNA into a cell, resulting in its acquisition of a new phenotype, is commonly referred to as "transformation," and transformed plants that contain genetic material derived from sources other than the host plant itself are called transgenic.

The desired gene(s) may be introduced into a host plant by one of several methods, including: (1) Direct DNA uptake by the plant cells mediated by chemical or electrical treatments; (2) microinjection of DNA directly into plant cells; (3) biolistics, or firing tiny particles coated with the DNA of interest into plant cells; and (4) the use of a bacterium, such as the soil bacterium *Agrobacterium tumefaciens*, as a vehicle to carry the DNA into plant cells. (For a discussion of these processes, see Ref. 4).

B. Need for a Selectable Marker

Transformation of plant cells by introducing exogenous DNA is an inefficient process and, in general, only a small proportion of cells will successfully take up, integrate, and express the new genetic material (Ref. 5). Further, the few cells that do so are not readily distinguishable from the vast majority of cells that do not. Therefore, developers of transgenic plants need a means to distinguish cells that are successfully transformed from those that are not. Selectable markers, such as the *kan*^{r} gene, perform this function.

The *kan*^{r} gene is linked to the gene (or genes) of interest and then this genetic material is inserted into plant cells. Because plant cells are sensitive to the antibiotic kanamycin, incorporation of the *kan*^{r} gene into cells and subsequent expression of APH(3')II provides a convenient method for selecting successfully transformed cells. *Kan*^{r} works as a marker because only successfully transformed cells (which contain both the *kan*^{r} and the desired genetic material) survive when grown in a kanamycin-containing medium. These cells are subsequently regenerated into transgenic plants.

C. Identity of the Additive

APH(3')II [1] (CAS Reg. No. 58943-39-8) is encoded by the *kan*^{r} gene, which was originally isolated as a component of transposon Tn5 [2] from the bacterium *Escherichia coli* (Refs. 6 and 7). APH(3')II is an enzyme with an apparent molecular weight of 25,000 that catalyzes the transfer of a phosphate group from adenosine 5'-triphosphate (ATP) to a hydroxyl group of aminoglycoside antibiotics (see below), thereby inactivating the antibiotics.

APH(3')II inactivates the aminoglycoside antibiotics neomycin, kanamycin, paromomycin, ribostamycin, gentamicins A and B, as well as butirosins (Refs. 8 and 9). Of the antibiotics that are inactivated by APH(3')II, only neomycin and kanamycin are currently approved for use in humans or animals in the United States (Refs. 10 and 11).[3]

The APH(3')II evaluated in this document is the enzyme whose synthesis is directed by the *kan*^{r} gene derived from transposon Tn5. This enzyme is not to be confused with enzymes that may be similarly named (e.g., a type I aminoglycoside phosphotransferase encoded by a gene isolated from transposon Tn601) or other bacterial enzymes (including acetyltransferases, nucleotidyltransferases, and phosphotransferases) that inactivate kanamycin and neomycin (Refs. 8 and 12).

D. Use and Intended Technical Effects

Aminoglycoside antibiotics exert their effect on bacteria by binding to bacterial ribosomes and inhibiting protein synthesis. Phosphorylation of the antibiotics by APH(3')II interferes with this binding and thus prevents the antibiotics from inhibiting protein synthesis (Ref. 13). In this way, cells that contain the *kan*^{r} gene and that express APH(3')II are rendered resistant to the action of the antibiotics. In plant cells, the antibiotics exert their effect on mitochondria and chloroplasts where protein synthesis takes place on ribosomes that resemble bacterial ribosomes (Ref. 14).

The proposed use of the *kan*^{r} gene and gene product APH(3')II is as a processing aid in the development of new varieties of tomato, cotton, and oilseed rape intended for food use. As discussed above, because transformation of plant cells is an inefficient process, the presence of APH(3')II and the consequent ability of the plant cells to grow in the presence of antibiotics is used to distinguish between transformed and nontransformed cells. Therefore, the intended technical effect of APH(3')II is to permit, in the early phases of development of genetically modified plants, the selection of transformants carrying the *kan*^{r} gene along with the genetic material of interest. However, APH(3')II has no intended technical effect in the final plant or final crop product.

III. Safety Evaluation

A. APH(3')II

Safety issues associated with APH(3')II can be divided into two areas: (1) Those associated with the direct effects of ingestion of the protein, including the possibility of allergenicity; and (2) those associated with the biological activity of APH(3')II (i.e., the effect of the enzyme on the therapeutic efficacy of orally administered antibiotics).

1. Direct Effects of Ingestion

Calgene provided evidence that APH(3')II is rapidly inactivated by stomach acid, is degraded by digestive enzymes, and is not modified by glycosylation (i.e., does not contain sugar molecules attached to the protein) when produced in the transgenic plants under consideration. In addition, Calgene noted that enzymes such as APH(3')II are heat labile. Thus, Calgene concluded that APH(3')II does not possess any of the characteristics associated with allergenic proteins such as proteolytic stability, glycosylation, or heat stability (Ref. 15). In April 1992, Calgene also conducted protein and DNA sequence comparisons using sequences in four separate databases (GenBank, EMBL, PIR 29, and Swiss-Prot) and established that APH(3')II does

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[1] Other names for this enzyme include neomycin phosphotransferase II (NPT II), neomycin phosphotransferase, and kanamycin phosphotransferase II.

[2] A transposon is a segment of DNA that is mobile and has the capacity to move from one site in the genome to another. Transposons vary in size and frequently contain, as does Tn5, antibiotic resistance genes in addition to genes coding for functions concerned with movement of the transposon.

[3] Gentamicin, which is used therapeutically, is composed of a complex mixture of the antibiotic substances produced by *Micromonospora purpurea* that contain primarily gentamicin C_1 (25 to 50 percent), gentamicin C_{1a} (10 to 35 percent), and gentamicins C_{2a} and C_2 (25 to 55 percent) (Ref. 10). Gentamicins A and B are at most minor components of the commercial drug. Thus, APH(3')II does not confer resistance to gentamicin that is used therapeutically (Ref. 12).

not have significant homology to any proteins listed as food allergens or toxins in these databases.

FDA agrees with Calgene that the characteristics of APH(3')II do not raise a safety concern. First, each whole food, on average, contains several thousands of different proteins (Ref. 16). As a class, proteins are rarely toxic (Ref. 17) and APH(3')II is not known to be toxic. Second, APH(3')II is a phosphorylating enzyme, and all plants and animals that are part of the food supply contain such phosphorylating enzymes without adverse consequences. Third, APH(3')II has been shown to be rapidly degraded under simulated gastric conditions (Refs. 18 through 21). Finally, the estimated dietary exposure to APH(3')II is very low (480 µg APH(3')II per person per day,[4] or 0.16 part per million in the diet, based on a 100-percent market share for tomatoes containing APH(3')II (Ref. 18)).

Based upon the available evidence, the agency believes that this protein does not possess any properties that would distinguish it toxicologically from other phosphorylating enzymes in the food supply. Further, because of the low exposure levels and normal digestibility of APH(3')II, the agency concludes that no limits other than good manufacturing practice are needed to ensure the safety of the petitioned use of APH(3')II (Ref. 20).[5]

2. Effects on the Therapeutic Efficacy of Orally Administered Antibiotics

a. *APH(3')II in human foods.* i. *Relevant source of APH(3')II.* Calgene considered whether APH(3')II could affect the therapeutic efficacy of orally administered aminoglycoside antibiotics. In doing so, Calgene stated that only APH(3')II from fresh tomatoes is relevant because it is the only form that is enzymatically active. Processed tomato products (such as processed whole tomatoes, chili, juice, pulp, paste, catsup, and soup) are subjected to temperatures in the range of 82 to 100 °C; these temperatures would be expected to inactivate the APH(3')II enzyme. For edible oils extracted from cottonseed and rapeseed, high temperature treatment, solvent extraction, and subsequent purification steps generally included in the processing of such oils would also be expected to inactivate APH(3')II.

FDA agrees that high temperature treatment denatures proteins and inactivates enzymes and therefore, processed products that contain tomatoes with the *kan*^{r} gene are unlikely to contain any enzymatically active APH(3')II. In addition, purified oils essentially do not contain protein; therefore, oils derived from transgenic cottonseed and rapeseed modified using the *kan*^{r} gene would not be expected to contain active or inactive APH(3')II (Refs. 18 and 23). Thus, FDA agrees that fresh tomatoes from plants developed using the *kan*^{r} gene are the only source of active APH(3')II.

ii. *Effect of APH(3')II in fresh tomatoes on the therapeutic efficacy of orally administered antibiotics.* Calgene performed several experiments intended to address whether APH(3')II consumed as a component of fresh tomatoes could render orally-administered kanamycin ineffective. These experiments were performed under simulated gastric and intestinal conditions (i.e., appropriate pH, reagent concentrations, temperature, and reaction times) chosen to reflect conditions expected in vivo. In some studies both tomato extract and nonfat milk were added to determine whether the presence of additional food-source proteins in the simulated gastric and intestinal fluids might slow the proteolytic degradation of APH(3')II by competition. After evaluating the loss of immunologically detectable APH(3')II, Calgene concluded that, under normal gastric and intestinal conditions, APH(3')II would be effectively degraded before the enzyme could inactivate kanamycin or neomycin and therefore, APH(3')II would not interfere with orally administered kanamycin or neomycin therapy. The results of Calgene's experiments were the same whether done in the presence or the absence of tomato extract and nonfat milk.

In addition, Calgene presented the results of in vitro degradation studies performed under simulated abnormal gastric conditions, such as may exist in patients treated with drugs that reduce stomach acidity. Calgene stated that these studies demonstrated that APH(3')II is not degraded in neutralized (pH 7.0) simulated gastric fluid and thus, APH(3')II may remain active in such abnormal gastric conditions. However, Calgene pointed out that, even under those conditions, APH(3')II would not be expected to inactivate orally administered kanamycin or neomycin because the concentration of ATP, which the enzyme requires to inactivate kanamycin and neomycin, would be limiting. In support of this contention, Calgene presented data from the published literature on ATP levels in fresh fruits and vegetables. Calgene then estimated ATP intake and calculated the fraction of neomycin that would be phosphorylated assuming that all of the available ATP reacted with the antibiotic. Under the worst-case situation (high intake of ATP-containing food, low dose of antibiotic) Calgene's calculations showed that only a small fraction (no more than 1.5 percent) of the antibiotic would be inactivated. Moreover, Calgene presented data that showed that no significant inactivation of kanamycin was observed during in vitro studies conducted with tomato extract containing APH(3')II and kanamycin over a 4-hour incubation period.

iii. *Agency conclusions.* The agency has evaluated the data and other information presented by Calgene (Refs. 18 through 21 and 24). FDA agrees that Calgene's in vitro digestion studies show that, as is the case for dietary protein in general, the biological activity of APH(3')II is destroyed during gastric and intestinal phases of digestion. Further, the agency has determined that any active APH(3')II that might remain would not significantly inactivate kanamycin or neomycin in the gut because the small amount of ATP in fruits and vegetables would limit the amount of antibiotic that could be phosphorylated. ATP is an extremely labile molecule that is susceptible to inactivation both by heat (e.g., cooking) and by enzymes, such as alkaline phosphatases (Ref. 25), that are found in the intestine. Because the ATP in meat, poultry, fish, and cooked vegetables would be broken down by cooking, the primary source of ATP in the gastrointestinal (GI) tract of patients would be uncooked fruits and vegetables. However, the amount of ATP in a variety of fruits and vegetables would provide enough ATP to inactivate only a small percentage of kanamycin or neomycin, even if one makes the conservative assumption that

[4] Because oils produced from transgenic cottonseed and rapeseed would not contribute APH(3')II to the human diet (see also section 2 below), the exposure estimate was derived exclusively for tomatoes. The agency made several conservative assumptions in arriving at the probable per capita exposure to APH(3')II of 480 µg/person/day. For example, FDA assumed that all tomatoes contain APH(3')II at a level of 0.1 percent of total protein although, of the two lines intended for commercialization by Calgene, one contains less than 0.01 percent and the other less than 0.002 percent of APH(3')II (as a percentage of total protein). Second, FDA included APH(3')II in processed products in its estimate although high temperature treatment used in the production of processed products would be expected to result in loss of enzymatic activity of APH(3')II. In summary, the exposure estimate represents a theoretical maximum rather than a realistic estimate of exposure to APH(3')II.

[5] A recently published study (Ref. 22) also showed that APH(3')II is rapidly degraded under simulated mammalian digestive conditions. In addition, in an acute mouse feeding study, the investigations showed that feeding highly exaggerated doses of purified APH(3')II caused no deleterious effects.

all of the ATP in these fruits and vegetables would survive the alkaline phosphatases in the intestines and would be available for catalytic phosphorylation of kanamycin or neomycin.

In addition, the agency has considered the patient population likely to be exposed to aminoglycoside antibiotics. Oral aminoglycosides are most commonly administered to either pre-operative patients (prior to bowel surgery) or patients with hepatic encephalopathy. Neither patient population would be expected to be ingesting tomatoes or any other fresh fruits and vegetables; therefore there is little or no risk of inactivating the oral antibiotic in these patients (Refs. 24 and 26). For these reasons, FDA concludes that the presence of APH(3')II in food will not compromise the therapeutic use of orally administered kanamycin or neomycin.

b. *APH(3')II in animal feed.* Calgene also considered the potential inactivation of neomycin that is used in animal feeds manufactured using cottonseed meal and rapeseed meal obtained from transgenic plants. The transgenic tomato was not considered because only small amounts of tomato and tomato byproducts are used in the animal feed industry. Further, neomycin is primarily used to treat calves and swine whereas tomato byproducts, to the extent that they are used in animal feed, are primarily used as ingredients in cattle diets (Ref. 27).

Calgene analyzed neomycin levels both in nontransgenic medicated cottonseed and rapeseed meals and in transgenic medicated cottonseed and rapeseed meals over a storage period of 56 days (considered a worst-case situation) and concluded that there was no significant inactivation of neomycin.

FDA reviewed the data submitted by Calgene and concludes that there was no significant difference with respect to neomycin stability between medicated cottonseed and rapeseed meals prepared from transgenic cottonseed and rapeseed containing APH(3')II, and appropriate controls (Ref. 28). Therefore, the agency concludes that transgenic strains of cottonseed and rapeseed containing APH(3')II have no apparent untoward effect regarding the stability of neomycin and that the therapeutic efficacy of neomycin in animal feed will not be affected. The agency also considers this conclusion applicable to other aminoglycoside antibiotics, e.g., gentamicin, when orally administered.

B. The Kan^r Gene

The agency also evaluated issues relevant specifically to the safety of the use of the *kan^r* gene in tomato, oilseed rape, and cotton. In particular, FDA evaluated the potential for horizontal transfer of the gene and subsequent expansion of the population of antibiotic-resistant pathogens. The agency evaluated whether efficacy of oral antibiotic treatment of humans or animals could be compromised by consumption of food containing the *kan^r* gene either because of the development of resistant intestinal microflora in humans and animals or because the cells lining the intestinal lumen might become transformed. In addition, the agency considered the possible transfer of the *kan^r* gene from transgenic plants to soil microorganisms and expansion of the antibiotic-resistant bacterial population.

1. Potential Transfer of the *kan^r* Gene to Intestinal Microorganisms and Cells Lining the Intestinal Lumen

Calgene presented theoretical and experimental evidence to demonstrate that the potential for compromise of antibiotic therapy by horizontal transfer of the *kan^r* gene to gut microorganisms or intestinal epithelial cells is not of significant concern. Calgene considered the sources of the *kan^r* gene, the role digestion plays in degrading DNA, and possible DNA transfer mechanisms.

a. *Relevant source of the kan^r gene available for transformation.* Calgene considered potential transfer of the *kan^r* gene only from fresh tomatoes because processing is expected to inactivate the *kan^r* gene in processed tomato products and in food products derived from cotton and oilseed rape. The *kan^r* gene is not expected to survive procedures used to process tomatoes because heating processes, such as those used in commercial processing, can directly degrade DNA or can damage DNA by releasing cellular DNA-degrading enzymes.

The *kan^r* gene is also not expected to survive the process of oil production from cottonseed and rapeseed. Mechanical grinding or flaking of oilseeds during the production of oils and meals from oilseeds is expected to liberate degradative enzymes normally present within the cell that would degrade the *kan^r* gene. In addition, oil processing also includes high temperatures and solvent extractions, both of which would be expected to inactivate the *kan^r* gene. Moreover, because DNA is hydrophilic, it is unlikely to fractionate into oil, which is hydrophobic, during the extraction of oil from cottonseed and rapeseed. Therefore, intact DNA, including the *kan^r* gene, is not expected to survive the production of oils and animal feeds from cottonseed and rapeseed.

b. *Effect of digestion on the availability of the kan^r gene for possible transformation.* Calgene demonstrated that most if not all of the DNA comprising the *kan^r* gene ingested by humans will be degraded in the stomach and upper small intestine before it reaches the lower small intestine, cecum, and colon, and would be unavailable for potential transformation of gut microorganisms. Calgene estimated that 99.9 percent of fresh tomato DNA would be digested to fragments smaller than 1,000 base pairs. This estimate was based on in vitro studies that found that only 0.1 percent of DNA could be detected as fragments of 1,000 base pairs or longer after exposure to stomach-simulating fluids for 10 minutes and to intestinal-simulating fluids for another 10 minutes. Thus most of the DNA remaining after digestion would be smaller than the *kan^r* gene which is about 1,000 base pairs long.

Regarding animal feed, food-producing animals consume primarily processed forms of cottonseed and rapeseed, in which, as discussed above, the *kan^r* gene is not expected to remain intact. In addition, researchers have shown that nucleic acids introduced into the rumens of calves, or incubated with calf, sheep, or cow rumen contents in vitro, were rapidly and completely degraded to nucleotides and nucleosides (Ref. 29).

c. *Calculation of worst-case transformation frequencies.* In its submission, Calgene addressed the potential for horizontal transfer of the *kan^r* gene. Natural transformation, i.e., the uptake and incorporation into the genome of free DNA, is known to occur in some bacterial species. This is the only possible mechanism by which intestinal microflora could take up free DNA (Ref. 30). However, none of the species known to be present in the GI tract has been found capable of acquiring exogenous DNA by natural transformation. Nonetheless, to consider the worst-case scenario, Calgene assumed that all microbes in the intestine would be able to take up and incorporate exogenous DNA at a frequency found for certain species of the genus *Streptococcus*. Calgene noted that although the firm developed its transformation model for certain *Streptococcus* species, they are not aware of any information indicating that *Streptococcus* species found in the GI tract can be naturally transformed.

To undergo natural transformation, the recipient bacterium must be transformation-competent, i.e., ready to take up DNA. As noted, none of the bacterial species that occur in the GI tract is known to be capable of becoming transformation-competent. In addition, the genome of a recipient bacterium should contain DNA homologous to the incoming DNA (Refs. 31 and 32). Because the genomes of intestinal *Streptococci* or other intestinal bacteria are not expected to exhibit homology to the DNA constructs containing the *kan*^{r} gene[6], Calgene assumed that the *kan*^{r} gene could only undergo "illegitimate" recombination, a process that does not require significant DNA homology. Calgene noted that illegitimate recombination occurs in microorganisms at a much lower rate than homologous recombination.

Under the foregoing worst-case assumptions, Calgene estimated that if a person consumes fresh tomatoes at the 90th percentile level (i.e., eats more tomatoes than 89 percent of the individuals in the population), the transformation frequency of the intestinal microorganisms with the *kan*^{r} gene will be approximately 3×10^{-15} transformants per day. This transformation frequency is more than 5 orders of magnitude less than the frequency of mutation to kanamycin resistance per bacterial replication, i.e., 10^{-9} (Ref. 12). Thus, Calgene showed that for every 300,000 bacteria that mutate to kanamycin resistance per replication (generally a matter of hours), there would be, at most, under worst-case conditions, one kanamycin-resistant bacterium per day added to that number due to transformation.

Calgene stated that the potential for food-producing animals to experience decreased efficacy of antibiotic therapy as a result of pathogenic intestinal microflora incorporating and expressing the *kan*^{r} gene would be similar to that described for humans, i.e., equally improbable. In reaching this conclusion, Calgene relied on the finding that DNA is rapidly and completely digested in the gut of food animals (Ref. 29) and on the contention that the worst-case transformation scenario described above for human gut microorganisms also applies to microorganisms found in the gut of food-producing animals.

[6]One population that does contain DNA segments homologous with part of the *kan*^{r} construct is *E. coli*, because the *kan*^{r} construct contains part of an *E. coli* gene. Although *E. coli* constitutes one of the predominant species of aerobic GI tract bacteria, *E. coli* is not transformation-competent under conditions that prevail in the GI tract (Ref. 33). Thus, transformation of *E. coli* due to homologous recombination is not an issue.

With respect to epithelial cells lining the intestinal lumen, Calgene provided information that no transformation of human epithelial cells has been demonstrated in vivo (Ref. 2). In addition, even if transformed, intestinal epithelial cells are terminally differentiated (i.e., do not divide) and have a relatively short life span (Ref. 34), and thus would continually be shed and replaced by nontransformed cells.

2. Potential Transfer of the *kan*^{r} Gene to Soil Microorganisms

Calgene also considered the possibility that the *kan*^{r} gene might be transferred to soil microorganisms, thereby increasing the level of antibiotic-resistant organisms in the environment. Calgene pointed out that the only plausible mechanism by which gene transfer could occur between plants and bacteria is through natural transformation. Taking this mechanism into consideration and using worst-case assumptions similar to those discussed above for intestinal microorganisms, Calgene calculated that, at worst, kanamycin-resistant transformants resulting from plant DNA left in the fields would represent not more than one in 10 million of the existing kanamycin-resistant soil population.

3. Food Advisory Committee Discussions Regarding Potential Horizontal Transfer of the *Kan*^{r} Gene

As part of its discussion of the scientific issues related to the evaluation of Calgene's genetically engineered tomato, the Food Advisory Committee discussed the possibility that the *kan*^{r} gene might be transferred to microorganisms in the GI tract and in the environment (Ref. 1).

The committee members concluded that transfer of the *kan*^{r} gene consumed as a component of tomatoes to microorganisms in the GI tract was highly unlikely based on published data in the scientific literature. Similarly, the committee members judged that the potential for transfer of the *kan*^{r} gene from plants to microorganisms in the environment is highly unlikely based on the members' knowledge of mechanisms of gene transfer. In addition, members of the committee pointed out that the rate at which such transfer could take place, if at all, was of so small a magnitude that, coupled with the high prevalence of kanamycin resistant organisms already present in the environment, it would not cause a significant environmental impact.

Some members of the committee, while convinced by the information presented at the meeting that the transfer of the *kan*^{r} gene from tomato plants to microorganisms in the soil was improbable, expressed concern regarding the use of the *kan*^{r} gene in other crops that may be grown on a wide scale. In addition, some committee members were concerned that a determination of safety with regard to the use of *kan*^{r} gene in Calgene's tomato might signal to producers that it is now permissible to use the *kan*^{r} gene in other crops. In light of such concerns, these committee members advised that use of the *kan*^{r} gene in other crops should be evaluated on a case-by-case basis.

4. Agency Conclusions

The agency has considered the recommendations of the members of the Food Advisory Committee. The agency agrees that the potential transfer of the *kan*^{r} gene, as well as other antibiotic resistance marker genes, from crops to microorganisms should be evaluated on a case-by-case basis. As noted, Calgene petitioned for the use of the *kan*^{r} gene product, APH(3')II, in the development of genetically engineered cotton and oilseed rape in addition to tomato. As discussed below, the agency has evaluated data and information concerning horizontal transfer of the *kan*^{r} gene from its use in all three crops. This is consistent with the committee's advice that safety of the use of the *kan*^{r} gene be evaluated on a case-by-case basis. In addition, Calgene's petition seeks to amend the food additive regulations to permit the use of APH(3')II only in tomato, cotton, and oilseed rape; approval of Calgene's petition would not mean that developers could use the *kan*^{r} gene in crops other than those identified in the petition.

FDA has also evaluated the information submitted by Calgene and has determined that the probability of transfer of the *kan*^{r} gene to gut microflora is remote and that even under worst-case conditions, the number of microorganisms that would be converted to kanamycin resistance is negligible when compared to the reported prevalence of gut microflora that are already resistant to kanamycin (Ref. 35). This conclusion applies to both humans and animals. The agency has determined that exposure to foods that contain the *kan*^{r} gene will not compromise the efficacy of antibiotic treatment because the likelihood of increasing the number of antibiotic resistant microorganisms is extremely low. Further, the agency has determined that there is no evidence that free DNA containing the *kan*^{r} gene, even if present, can transform cells lining the GI tract (Ref. 2).

FDA has also evaluated the information submitted by Calgene concerning soil microorganisms and agrees with Calgene that there would be no increase in kanamycin-resistant soil microorganisms because it is highly unlikely that the *kan*^{r} gene could move from the plant genome into soil microorganisms via horizontal gene transfer. Further, the agency has determined that, even if such transfer could occur, the rate at which it could occur is such that it would not result in a detectable increase over the existing background population of kanamycin-resistant bacteria (Ref. 36). Based on the foregoing, FDA has concluded that the use of the *kan*^{r} gene does not pose safety concerns in terms of increase in the population of antibiotic-resistant pathogens due to the potential for horizontal transfer of the gene.

IV. Response to Comments

FDA received 47 comments on Calgene's request for an advisory opinion on the use of the *kan*^{r} gene in the development of new varieties of tomato, oilseed rape, and cotton plants. Comments were received from members of academia, industry and industry-related organizations, State and Federal agencies, environmental groups and other nonprofit organizations, and individual consumers. Additionally, several comments on the agency's 1992 policy statement addressed the use of the *kan*^{r} gene.

Most of the comments supported the use of the *kan*^{r} gene in crop development, stating that there were no health or environmental issues precluding its use. Several comments expressed opinions on a wide range of issues including regulatory approaches for genetically engineered foods, concerns relating to human and animal food safety, and to the environmental effects of the *kan*^{r} gene, and whether foods containing the *kan*^{r} gene and APH(3')II should be specially labeled.

A. Regulatory Issues

Some comments stated that it was not appropriate for FDA to evaluate the safety of the *kan*^{r} gene and APH(3')II under an advisory opinion and that the *kan*^{r} gene and APH(3')II should be treated as food additives by FDA. FDA has discussed above the basis for its decision not to regulate the DNA that makes up the *kan*^{r} gene itself as a food additive. Further, in light of Calgene's conversion of its request for advisory opinion on the use of the *kan*^{r} gene to a food additive petition, the comment concerning the regulation of APH(3')II as a food additive no longer requires a response

B. Food Safety

Several comments stated that the presence in food of APH(3')II raised no food safety concerns whatsoever. Others questioned whether Calgene had supplied adequate data to ensure the safety of the *kan*^{r} gene and gene product, APH(3')II, when present in food. The substantive questions raised are discussed in sections IV.B.1 through 5 of this document

1. Glycosylation

Two comments stated that APH(3')II might be glycosylated (i.e., might contain sugar molecules attached to the protein via the amino acid asparagine (N-linked) or via the amino acids serine, threonine, or hydroxyproline (O-linked)) when produced in tomatoes or other plants and, therefore, might become a food allergen. One of the comments asserted that for this reason, Calgene should be required to test whether APH(3')II is glycosylated. The comments, however, did not provide any information showing that glycosylated APH(3')II is likely to be, or is, allergenic.

At this time, FDA is unaware of any practical method to predict or assess the potential for new proteins in food to induce allergenicity. Although many food allergens that have been characterized at a structural level are glycosylated (Ref. 37), the agency is not aware of any information on structural or other properties of glycosylated proteins that would be predictive of their allergenicity. As noted, the comments did not provide such information. Moreover, glycosylated proteins are widespread in food. For these reasons, glycosylation is not a useful positive predictor of a potential allergenic effect. Accordingly, FDA did not request that Calgene determine whether APH(3')II is glycosylated.

Nevertheless, in a submission dated October 24, 1991, entitled "Response to Public Comments," Calgene addressed whether APH(3')II is likely to be glycosylated and concluded that it is not. Calgene noted that APH(3')II lacks the amino terminal sequence of amino acids (commonly referred to as a "signal peptide") that is necessary to direct the protein into the cellular compartments where glycosylation occurs. Calgene also asserted that the unchanged molecular weight of APH(3')II in plants (relative to the molecular weight of bacterial APH(3')II, which is not glycosylated) supports the conclusion that APH(3')II is not glycosylated in plants. Finally, Calgene stated that the amino acid sequence (asparagine-X-serine/threonine) that is required to direct N-linked glycosylation to specific asparagine moieties is not present in APH(3')II. (Calgene noted that a corresponding argument for the lack of the appropriate amino acid sequence to direct O-linked glycosylation cannot be made because the sequences that direct O-linked glycosylation have not been defined.)

FDA has considered the information and arguments submitted in the comments and Calgene's response and has concluded that the available evidence indicates that APH(3')II is not glycosylated in plants. However, even if glycosylation had been demonstrated, FDA emphasizes that glycosylation alone does not necessarily establish that APH(3')II is likely to produce an allergenic response because the positive predictive value of glycosylation with respect to the potential for inducing allergenicity has not been demonstrated

2. In Vitro Digestibility Studies

In its original submission, Calgene presented the results of in vitro digestibility studies that demonstrated that APH(3')II enzymatic activity is rapidly decreased in simulated gastric fluid and in simulated intestinal fluid.

One comment asserted that Calgene should provide a more thorough study of degradation of APH(3')II in the digestive tract because the conditions of the in vitro digestibility study submitted by Calgene did not fully mimic the complex environments of the human gut. The comment further asserted that it was not clear whether the digestibility data also apply to neonates and to people with coeliac disorders or ulcers who can absorb peptides and intact proteins through their intestines. The comment noted that the applicability of the data to neonates would be of special importance should *kan*^{r} be used in soybeans because soy protein is a major component of some infant formulas. Importantly, however, the comment presented no information to provide a basis for concluding that the absorption of APH(3')II occurs, or that if it does, such absorption presents a health concern greater than that posed by the absorption of any other protein in the diet.

As discussed above, FDA has evaluated the studies presented by Calgene to demonstrate the normal digestibility of the enzyme and concurs with Calgene's conclusion that APH(3')II is rapidly degraded under normal conditions in the GI tract. Therefore, FDA believes that the intestinal transfer of intact or large fragments of APH(3')II is not likely to occur in individuals with normal GI tracts.

In regard to the possibility of increased intestinal absorption of proteins in neonates and individuals with special conditions (e.g., ulcers), FDA has concluded that there is no reason to expect that absorption of the intact or partially digested APH(3')II protein would present a safety problem different from absorption of any other protein in the diet. As discussed above, proteins, as a class, are rarely toxic. Furthermore, APH(3')II is a phosphorylating enzyme and does not contain any properties that would distinguish it toxicologically from any other phosphorylating enzymes that historically have been part of the food supply without adverse consequences. Finally, because Calgene did not petition FDA for the use of APH(3')II in soybeans, it is not necessary to address the comment concerning the applicability of Calgene's digestibility data to neonates fed soybean-derived formulas.

3. Copy Number of the *kan*^{r} Gene and Expression Level of APH(3')II

In its submission of November 26, 1990, Calgene stated that it did not intend to commercialize lines that contained more than 10 copies of the *kan*^{r} gene. In addition, Calgene also declared that, in tomatoes, the APH(3')II level would be no more than 0.1 percent of the total protein of the tomato and that processing procedures would destroy APH(3')II in processed tomatoes and edible oils extracted from cottonseed and rapeseed.

One comment asserted that Calgene inadequately described the methods by which it would ensure that no lines with greater than 10 copies of the *kan*^{r} gene would be marketed. The comment further asserted that many of the analyses offered by Calgene to prove the safety of the *kan*^{r} gene depend on estimates of the number of genes per cell and that, if the company cannot ensure this relatively low level of gene incorporation, many of its safety arguments are undermined. The comment, however, did not identify which of Calgene's safety analyses depended on estimates of the numbers of genes per cell.

The comment may have been referring to Calgene's assumption that each plant cell would contain 10 copies of the gene when it calculated a worst-case frequency of transformation of microorganisms with the *kan*^{r} gene that would result from use of the gene in transgenic plants. However, the agency notes that the outcome of those calculations, i.e., Calgene's conclusion that the transformation frequency of microorganisms with the *kan*^{r} gene is insignificant, would not change had Calgene assumed much higher gene copy numbers in its calculations. Therefore, FDA's safety assessment does not depend on precise estimates of gene copy number. Nor does the comment provide a basis for concluding that it is necessary to have precise methods for ensuring that no plants with more than 10 copies of the gene will be marketed.

A second comment maintained that Calgene provided an inadequate description of the quality control and assurance procedures the company would use to ensure that APH(3')II would be kept to no more than 0.1 percent of total protein of the tomato, and that a number of the company's safety analyses rely on the amount of APH(3')II in the food. The comment, however, did not identify which of Calgene's safety analyses relied on estimates of the concentration of APH(3')II in the food.

FDA has determined that there is no need to set a tolerance for the amount of APH(3')II that will be consumed because the agency knows of no reason why this protein would have any properties that would distinguish it toxicologically from any other phosphorylating enzymes in the food supply. Also, as discussed above, APH(3')II will not affect efficacy of orally administered antibiotics because APH(3')II is rapidly digested under normal conditions in the GI tract, and even in abnormal gastric conditions where APH(3')II may not be rapidly digested, the amount of ATP available in food would allow only a small proportion of kanamycin and neomycin to be inactivated. Therefore, the agency concludes that there is no need to require quality control and assurance procedures to ensure that the APH(3')II level will be no more than 0.1 percent of the total protein in commercial tomato varieties.

A third comment argued that Calgene did not provide data to establish that APH(3')II would not be present after tomato processing and after extraction of edible oils.

The agency's exposure estimates included an assumption that APH(3')II would be present in both processed tomatoes and fresh tomatoes even though the high temperatures involved in processing inactivate enzymes and therefore, processed tomato products are unlikely to contain enzymatically active APH(3')II (Ref. 18). In addition, well-established processing procedures used to extract edible oils from oilseed crops do not extract significant amounts of protein (Ref. 23). Therefore, exposure to APH(3')II obtained from rapeseed oil and cottonseed oil would be negligible (Ref. 18). The comment did not present any information to contradict FDA's analysis and conclusion on this point.

4. The Potential for Side Effects From Consumption of Genetically Engineered Foods

One comment asked whether there might be side effects from consumption of genetically engineered foods, and if so, whether these side effects would be short term or long term. Another comment noted that food plants and humans exhibit complex and unpredictable behavior and that therefore, the safety of a food substance should be based on thoughtfully gathered empirical evidence.

The comments did not point to any specific side effects of genetically engineered foods. FDA has evaluated the safety of APH(3')II and has determined that it is safe for its proposed use. This safety assessment is in fact based on empirical evidence, such as the structure and function of APH(3')II, the low level at which APH(3')II occurs in foods, the digestibility of APH(3')II, and the inability of APH(3')II to interfere with clinically useful antibiotics under usual conditions of use for the antibiotics.

5. Relevance of Clinical Studies

Several comments noted that a National Institutes of Health (NIH) gene therapy trial in which cancer patients were infused with cells containing the *kan*^{r} gene, and which was cited by Calgene as strong evidence for the safety of the *kan*^{r} gene, provides little information concerning the safety of the *kan*^{r} gene and APH(3')II in food. One comment also noted that the combination of data from the in vitro studies and the gene therapy study was an inadequate basis for a safety determination of the *kan*^{r} gene and APH(3')II in food that millions of people might eat.

In determining that APH(3')II is safe for its proposed food additive use, FDA did not rely on the NIH gene therapy trial. However, FDA does believe that the in vitro degradation data provide important information that should be and was considered by the agency as part of its overall safety assessment of the *kan*^{r} gene and APH(3')II, as discussed earlier in this document.

C. Possible Effect on Clinical Efficacy of Orally Administered Kanamycin or Neomycin

Several comments questioned whether the presence of APH(3')II in tomatoes or other foods might compromise the clinical efficacy of orally administered kanamycin or

neomycin. One comment noted that Calgene claimed that at most only 76,800 people annually were administered kanamycin or neomycin orally, and argued that those people deserved not to be put at risk. The comment further requested that Calgene be required to perform animal studies on the effects of ingestion of APH(3')II on the efficacy of orally administered kanamycin and neomycin. The comment asserted that if APH(3')II were shown to compromise clinical efficacy of kanamycin or neomycin, food containing APH(3')II should be appropriately labeled.

Other comments observed that ingested APH(3')II would not impair the efficacy of orally administered kanamycin and neomycin, that these antibiotics are rarely administered orally, and that the *kan*^{r} gene is therefore a good choice as a selectable marker gene.

FDA agrees with Calgene that kanamycin and neomycin are rarely administered orally. The primary clinical role for orally administered neomycin, and to a lesser extent kanamycin, is cleansing the bowel of microbes prior to bowel surgery. This use is relatively minor because of severe side effects (auditory nerve damage and kidney damage) that may result from the antibiotic that is absorbed from the GI tract (Ref. 38).

As discussed above, for most individuals receiving oral kanamycin or neomycin, APH(3')II will be inactivated by the acidic environment of the stomach and degraded by the digestive enzymes present in the GI tract. More important, even for patients receiving simultaneous treatment to reduce stomach acidity, the amount of ATP available from food would allow, at most, only a small fraction of kanamycin or neomycin to be inactivated. The comment advocating animal studies did not contradict directly or indirectly FDA's analysis concerning the inactivation and degradation of APH(3')II or the information concerning ATP levels. FDA has therefore determined that the presence of APH(3')II in food will not compromise therapy with orally administered kanamycin or neomycin. On this basis, FDA has concluded that neither animal studies on the effects of ingestion of APH(3')II on the efficacy of the antibiotics, nor special labeling of foods containing APH(3')II for patients receiving orally administered kanamycin or neomycin, are necessary.

D. Fate of the kan^r *Gene in the Environment*

1. Potential Transfer of the *kan*^{r} Gene From Crops to Microorganisms

One comment posited a connection between "the prophylactic use of antibiotics [resulting] in antibiotic-resistant bacteria reaching the human population" with a health risk from the possible addition of up to "10 antibiotic genes [sic] in most of the cells of major crops." The comment agreed with Calgene's documentation that the widespread use of antibiotics has led to an increase in antibiotic-resistant bacteria in the environment, but went on to postulate that this was evidence that introducing antibiotic-resistance genes into plants has human health implications.

The comment further asserted that the "scientific question is whether the resistance genes in the crops can be transferred by any mechanism [to] organisms that might be human pathogens," and that the company should be required experimentally to "determine the rates of gene transfer to soil bacteria from plant debris, the persistence or selection of organisms containing such genes in soil ecosystems, and other important factors in the assessment of the likelihood of releases compromising the use of antibiotics." The comment noted that Calgene analyzed these issues "in some detail," but with "arm chair calculations, most based on extrapolations from experiments done with other organisms under other circumstances."

A second comment noted that Calgene had supplied information that three kinds of bacteria, with and without plasmids[7] carrying antibiotic resistance genes, had little effect on several measures of soil ecosystems, but wrote that the "relevance of experiments on bacteria to releases of plants is marginal, at best." A third comment asserted, without any supporting evidence, that "genetic resistance to antibiotics in these plants could be transferred by plasmids to microorganisms in the soil and elsewhere in the food chain."

FDA agrees that increasing the number and prevalence of antibiotic-resistant microbes may have serious human health implications if those microbes are themselves pathogens of humans or domesticated animals, or share the same microenvironment as such pathogens. FDA considers the relevant scientific question to be whether there would be a meaningful increase in antibiotic-resistant pathogenic microbes in the human environment due to transfer of the *kan*^{r} gene from plants to microbes. This issue was also the subject of considerable discussion at the April 1994 Food Advisory Committee meeting. As discussed in detail above, FDA has determined, based on the body of evidence presented by Calgene and based on the discussions of the Food Advisory Committee (Ref. 1), that the transfer of the *kan*^{r} gene from plants to microbes will not occur at a detectable frequency and overall will result in no significant increase in the numbers of antibiotic-resistant microbes. Regarding whether Calgene should be required to determine experimentally the rate of transfer, the agency notes that Calgene's calculations represent worst-case scenarios, and the agency believes it would not be useful to do experiments to attempt to measure that which is too small to measure.

Regarding the relevance of experiments on bacterial releases to the environment, FDA finds that information concerning the lack of an environmental effect from the release of microbes with and without antibiotic resistance genes is of limited direct relevance to the environmental effects of plants with antibiotic resistance genes. The agency did not rely on this information in reaching its determination that there will be no significant increase in the antibiotic-resistant microorganism population of the soil.

Finally the claim that the *kan*^{r} gene could be transferred from plants to bacteria by plasmids is without basis because there is no evidence that plasmids exist in plants.

2. Potential Transfer of the *kan*^{r} Gene to Other Crops and to Wild Relatives

Comments were also received on the potential transfer of the *kan*^{r} gene to other crops and wild relatives. These comments address environmental issues and do not bear on the safety of APH(3')II for its proposed food additive use and are therefore addressed in section VII. of this document.

E. Possible Effects of Consumption of Animal Feeds Containing APH(3')II on Animals and Their Gut Microflora

One comment argued that empirical evidence should be gathered to assess the potential effects of modified foods on animals and their gut microflora.

The agency is aware of no information that APH(3')II would affect animals or their gut microflora any differently than any other protein in the diet, nor did the

[7] Plasmids are self-replicating units of DNA commonly found in bacteria and are responsible for transfer of antibiotic resistance between bacteria.

comment provide such information. The comment may have been referring to the theoretical potential for APH(3')II in animal feed to affect efficacy of neomycin administered to animals, and the theoretical potential for the gut microflora to take up the *kan*^{r} gene and become resistant to neomycin. As discussed above, the likelihood of transfer of the *kan*^{r} gene to gut microflora of food animals is extremely remote. Also, as discussed above, FDA has evaluated the study presented by Calgene addressing the possibility of inactivation of neomycin by APH(3')II in animal feed and has concluded that the therapeutic efficacy of neomycin in animals would not be affected by consumption of feed containing transgenic cottonseed and rapeseed modified through the use of the *kan*^{r} gene.

F. Labeling of Foods Containing the Kan^r *Gene and APH(3')II*

One comment asserted that APH(3')II should be labeled as an ingredient. The comment further stated that, if FDA exempted APH(3')II from ingredient labeling requirements (based on its classification as a processing aid that is present at insignificant levels in a finished food and has no technical or functional effect in that food), FDA should require special labeling if the ingestion of food containing APH(3')II could compromise the clinical efficacy of orally administered kanamycin or neomycin.

FDA's authority over food labeling is based on section 403 of the act (21 U.S.C. 343). Section 403(i) of the act requires that, in the case of foods fabricated from two or more ingredients, a food product bear on the label the common or usual name of each ingredient, unless compliance with the requirement for labeling is impracticable or results in deception or unfair competition. FDA considers an "ingredient" to be a substance used to fabricate (i.e., manufacture or produce) a food. FDA does not consider those substances that are inherent components of food to be ingredients that must be disclosed in the food's label.

A genetic substance introduced into a plant by breeding becomes an inherent part of the plant as well as of all foods derived from the plant. Consistent with FDA's general approach on ingredient labeling, the agency has not treated as an ingredient a new constituent of a plant introduced by breeding, regardless of the method used to develop the new plant variety. The comment provides no basis for FDA to deviate from its current practice in the case of APH(3')II.[8] Accordingly, FDA has determined that neither the *kan*^{r} gene nor APH(3')II is an ingredient that, under section 403(i) of the act, must be individually identified in labels of foods containing them.

FDA has also determined that the presence of APH(3')II is not a material fact that must be disclosed in the labeling of foods that contain the enzyme. Under section 403(a)(1) of the act (21 U.S.C. 343(a)(1)), a food is misbranded if its labeling is false or misleading. Under section 201(n) of the act (21 U.S.C. 321(n)), labeling is misleading if it fails to reveal all facts that are "* * * material with respect to consequences which may result from the use of the article * * *." As discussed at length above, FDA has determined that the ingestion of food containing APH(3')II will not compromise the clinical efficacy of orally administered kanamycin or neomycin. Because the consequences alleged in the comment—compromise of clinical efficacy—will not occur, the presence of APH(3')II is not a material fact requiring disclosure.

V. Conclusions

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of APH(3')II as a processing aid in the development of new varieties of tomato, oilseed rape, and cotton is safe, and that 21 CFR parts 173 and 573 should be amended as set forth below.

VI. Inspection of Documents

In accordance with §§ 171.1(h) and 571.1(h) (21 CFR 171.1(h) and 571.1(h)), 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 by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h) and 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

Calgene's initial submission requesting an advisory opinion regarding whether the *kan*^{r} gene may be used in the production of genetically engineered tomato, cotton, and oilseed rape plants included an environmental assessment (EA). The agency received comments on this EA. As noted earlier, the request for advisory opinion was later converted to a food additive petition at Calgene's request at which time Calgene submitted an updated EA. At the time the notice of filing was published in the **Federal Register**, FDA announced that the petitioner's EA was being made available to the public at the Dockets Management Branch (address above) and expressly solicited comments on the EA. No additional comments were received in response to this request for comments. The comments received on the original EA are discussed below.

One comment asserted that the *kan*^{r} gene could spread from tomato, cotton, and oilseed rape plants to other crops and related weeds by pollen flow when the *kan*^{r} gene-containing crops are grown near nontransgenic crops, and in locations where the *kan*^{r}-gene containing crops have wild relatives. The comment noted that transfer of the *kan*^{r} gene would create a problem if it were to make wild and weedy relatives more difficult to control.

The comment also criticized the Calgene submission for not addressing whether it is "wise to contribute foreign genes to the gene pools of wild plants even where the plants do not become weeds or manifest other obviously harmful traits" and stated that Calgene's submission "too easily dismissed the problem of outcrossing from the engineered oilseed rape." The comment noted that oilseed rape has wild and weedy relatives with which it can breed, and that "it is not sufficient to rely on traditional commercial control practices to control gene flow," but that the rate of gene flow must be experimentally determined and then "controlled by procedures that are demonstrated, not assumed, to work."

The agency has considered the potential for adverse environmental effects from the commercial use of cotton, tomato, and oilseed rape plants modified to contain the *kan*^{r} gene. The agency notes that it is possible for cotton and tomato plants to transfer the *kan*^{r} gene to neighboring plants of the same species via cross-pollination, although commercially grown cotton and tomatoes are primarily self-pollinating. Oilseed rape plants are also capable of pollinating sexually compatible wild relatives, although not all crosses with wild relatives prove fertile. Importantly, however, introduction of the *kan*^{r} gene will not

[8] Furthermore, APH(3')II satisfies the definition of "processing aid" in § 101.100(a)(3)(ii)(*c*) (21 CFR 101.100(a)(3)(ii)(*c*)) and will be regulated as such by this final rule. As the comment acknowledges, FDA's labeling regulations exempt processing aids like APH(3')II from the labeling requirements of section 403(i)(2) of the act. Thus, even if APH(3')II were properly considered an ingredient, its presence in a food would not be required to be disclosed in the food's labeling.

confer a competitive advantage upon a plant receiving it. That is, the gene will not enhance the plant's capacity to compete with other plants for available resources. In particular, there will be no selective pressure on plants containing the *kan*^{r} gene because kanamycin will not be present in the environment in sufficient concentrations to create such pressure. First, there are no specific therapeutic uses of kanamycin that would result in its widespread application to agricultural crops. Also, kanamycin does not accumulate in the environment from production by soil microbes or by land application of animal wastes (Ref. 36). Accordingly, FDA has concluded that transfer of the *kan*^{r} gene to other crops or related weeds will have no significant adverse environmental effects.

With regard to the comment about outcrossing from engineered oilseed rape, the comment provided no information to show that the transfer of the *kan*^{r} gene to wild or weedy relatives of oilseed rape will be any more frequent or have any greater significance than the transfer of other genes from cultivated oilseed rape. FDA is aware of no human health or environmental concern associated with such transfer. Therefore, the agency does not agree that the cultivation of *kan*^{r}-containing oilseed rape should be subject to control practices any different from those used traditionally.

The agency has carefully considered the potential environmental effects of this action, including those described in the comments discussed in this document. 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 between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before June 22, 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.

IX. 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. Transcript of meeting of the Food Advisory Committee, FDA, Herndon, VA, April 6 through 8, 1994.
2. Hoskins, L.C., "Host and Microbial DNA in the Gut Lumen," The Journal of Infectious Diseases, 137:694–698, 1978.
3. Memorandum from T.A. Cebula, FDA, to N. Beru, FDA, November 2, 1993.
4. Potrykus, I., "Gene Transfer to Plants: Assessment of Published Approaches and Results," in "Annual Review of Plant Physiology and Plant Molecular Biology," Briggs, W.R., R.L. Jones, and V. Walbot, 42:205–225, 1991.
5. Fraley, R.T. et al., "Genetic Transformation in Higher Plants," Critical Reviews in Plant Sciences, 4:1–46, 1985.
6. Beck, E. et al., "Nucleotide Sequence and Exact Localization of the Neomycin Phosphotransferase Gene From Transposon Tn^5," *Gene*, 19:327–336, 1982.
7. Jorgensen, R.A. et al., "A Restriction Enzyme Cleavage Map of Tn^5 and Location of a Region Encoding Neomycin Resistance," Molecular and General Genetics, 177:65–72, 1979.
8. Davies, J. et al., "Plasmid-determined Resistance to Antimicrobial Agents," Annual Review of Microbiology, 32:469–518, 1978.
9. Goldman, P.R. et al., "Purification and Spectrophotometric Assay of Neomycin Phosphotransferase II," Biochemical and Biophysical Research Communications, 69:230–236, 1976.
10. U.S. Pharmacopeia (U.S.P.), The National Formulary (NF) 1990, U.S.P. XXII, NF XVII, U.S. Pharmacopeial Convention, Inc., Mack Printing Co., Easton, PA.
11. Prescott, J.F., and J.D. Baggot, "Aminoglycosides and Aminocyclitols," in Antimicrobial Therapy in Veterinary Medicine, Blackwell Scientific Publications, Boston, MA, pp. 121–152, 1988.
12. Davies, J.E., "Aminoglycoside-aminocyclitol Antibiotics and Their Modifying Enzymes," in "Antibiotics in Laboratory Medicine," 2d ed., Lorian, V., editor, pp. 790–809, 1986.
13. Dickie, P. et al., "Effect of Enzymatic Adenylation on Dihydrostreptomycin Accumulation in *Escherichia coli* Carrying the R-factor: Model Explaining Aminoglycoside Resistance by Inactivating Mechanisms," Antimicrobial Agents and Chemotherapy, 14:569–580, 1978.
14. Nap, J.P et al., "Biosafety of Kanamycin-resistant Transgenic Plants," Transgenic Research, 1:239–249, 1992.
15. Taylor, S.L. et al.,"Food Allergens: Structure and Immunologic Properties," Annals of Allergy, 59:93–99, 1987.
16. Darnel, J. et al., "Molecular Cell Biology," 2d ed., p. 116, Scientific American Books, Inc.
17. Pariza, M.W. et al., "Determining the Safety of Enzymes Used in Food Processing," Journal of Food Protection, 46:453–468, 1988.
18. Memorandum from Z. Olempska-Beer, FDA, to N. Beru, FDA, August 10, 1993.
19. Memorandum from Z. Olempska-Beer, FDA, to J. Maryanski, FDA, July 14, 1992.
20. Memorandum from C.B. Johnson, FDA, to V. Zenger, FDA, September 7, 1993.
21. Memorandum from C.B. Johnson, FDA, to J. Maryanski, FDA, July 14, 1992.
22. Fuchs, R.L. et al., "Safety Assessment of the Neomycin Phosphotransferase II (NPTII) Protein," Biotechnology, 11:1543–1547, 1993.
23. USDA Agricultural Handbook No. 8, Table I, Item 1401.
24. Memorandum from Z. Olempska-Beer, FDA, to N. Beru, FDA, August 9, 1993.
25. Orten, J.M. and O.W. Neuhaus, Human Biochemistry, 10th ed., pp. 537–538, C.V. Mosby Co., St. Louis, MO, 1982.
26. Memorandum from A.T. Sheldon, FDA, to J. Maryanski, FDA, March 30, 1993.
27. Memorandum from S.A. Giduck, FDA, to V. Zenger, FDA, July 21, 1992.
28. Memorandum from J.D. McCurdy, FDA, to V. Zenger, FDA, October 13, 1993.
29. McAllan, A.B. et al., "Degradation of Nucleic Acids in the Rumen," British Journal of Nutrition, 29:467–474, 1973.
30. Stewart, G.J. et al., "The Biology of Natural Transformation," Annual Review of Microbiology, 40:211–235, 1986.
31. Taylor, D.E., "Genetics of Campylobacter and Helicobacter," Annual Review of Microbiology, 46:35–64, 1992.
32. Stewart, G.J., "The Mechanism of Natural Transformation," in "Gene Transfer in the Environment," Levy, S. B. and R. V. Miller, editors, pp. 139–164, McGraw-Hill, New York, 1989.
33. Bergmans, H.E.N. et al., "Transformation in *Escherichia coli*: Stages in the Process," Journal of Bacteriology, 146:564–570, 1981.
34. Lapkin, M., "Proliferation and Differentiation of Normal and Diseased Gastrointestinal Cells," in "Physiology of the Gastrointestinal Tract," 2d ed., Johnson, L.R. et al., editors, Raven Press, New York, NY, 1987.
35. Levy, S.B. et al., "High Frequency of Antimicrobial Resistance in Human Fecal Flora," Antimicrobial Agents and Chemotherapy, 32: 1801–1806, 1988.
36. Memorandum from J. Glover-Glew, FDA, to N. Beru, FDA, December 15, 1993.

37. Sweeney, M.J. et al., "Immunology of Food Allergens," in "Handbook of Food Allergens," pp. 13–35, Breneman, J.C., editor, Marcel Dekker, Inc., New York, 1987.

38. Goodman, L.S. and Gilman, A., "The Pharmacological Basis of Therapeutics," 7th ed., pp. 1157–1160, MacMillan Publishing Co., New York, 1980.

List of Subjects

21 CFR Part 173

Food additives.

21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 173 and 573 are amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

2. New § 173.170 is added to subpart B to read as follows:

§ 173.170 Aminoglycoside 3′-phosphotransferase II.

The food additive aminoglycoside 3′-phosphotransferase II may be safely used in the development of genetically modified cotton, oilseed rape, and tomatoes in accordance with the following prescribed conditions:

(a) The food additive is the enzyme aminoglycoside 3′-phosphotransferase II (CAS Reg. No. 58943–39–8) which catalyzes the phosphorylation of certain aminoglycoside antibiotics, including kanamycin, neomycin, and gentamicin.

(b) Aminoglycoside 3′-phosphotransferase II is encoded by the *kan*^{r} gene originally isolated from transposon Tn^5 of the bacterium *Escherichia coli*.

(c) The level of the additive does not exceed the amount reasonably required for selection of plant cells carrying the *kan*^{r} gene along with the genetic material of interest.

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

3. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

4. New § 573.130 is added to subpart B to read as follows:

§ 573.130 Aminoglycoside 3′-phosphotransferase II.

The food additive aminoglycoside 3′-phosphotransferase II may be safely used in the development of genetically modified cotton, oilseed rape, and tomatoes in accordance with the following prescribed conditions:

(a) The food additive is the enzyme aminoglycoside 3′-phosphotransferase II (CAS Reg. No. 58943–39–8) which catalyzes the phosphorylation of certain aminoglycoside antibiotics, including kanamycin, neomycin, and gentamicin.

(b) Aminoglycoside 3′-phosphotransferase II is encoded by the *kan*^{r} gene originally isolated from transposon Tn5 of the bacterium *Escherichia coli*.

(c) The level of the additive does not exceed the amount reasonably required for selection of plant cells carrying the *kan*^{r} gene along with the genetic material of interest.

Dated: May 17, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

David A. Kessler,

Commissioner of Food and Drugs.

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Part III

Department of Energy

10 CFR Part 765

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites; Final Rule and Notice

DEPARTMENT OF ENERGY

10 CFR Part 765

[1901–AA53]

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy, Office of Environmental Management, is promulgating this final rule to establish requirements governing reimbursement for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium or thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. The Energy Policy Act of 1992 requires the Department of Energy to implement these requirements of Title X and establish procedures for eligible licensees to submit claims for reimbursements.

EFFECTIVE DATE: June 22, 1994.

ADDRESSES: The official record for this rulemaking activity is available for public review in the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC, from 9:30 a.m. to 4:30 p.m., Monday through Friday. The Department's standardized claims format guide and annual report will be available upon written request to the Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 2155 Louisiana NE., suite 10000, Albuquerque, NM 87110.

FOR FURTHER INFORMATION CONTACT: David Mathes, Office of Environmental Management (EM–45), U.S. Department of Energy, (301) 903–7223, or Steven Hamp, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, (505) 845–4628.

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I. Introduction and Background

A. Statutory Authority

Title X of the Energy Policy Act of 1992 (Sections 1001–1004 of Public Law 102–486, 42 U.S.C. 2296a *et seq.* (hereinafter "the Act")), enacted on October 24, 1992, requires the Department of Energy (hereinafter the "Department") to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action at active uranium or thorium processing sites, which also include vicinity properties. Consistent with section 1002 of the Act (42 U.S.C. 2296a–1) the Department is promulgating this final rule to implement the requirements of Title X and to establish procedures for eligible applicants to submit claims for reimbursement.

Title X provides that, with certain exceptions, remedial action costs at active uranium or thorium processing sites shall be borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2092, 2111) (hereinafter the "Atomic Energy Act"). Section 1001(b)(1)(B) of the Act (42 U.S.C. 2296a(b)(1)(B)) requires the Department to reimburse eligible licensees of an active processing site a portion of the costs determined by the Department to be attributable to byproduct material generated as an incident of sales to the United States and either (a) Incurred by such licensee not later than December 31, 2002; or (b) placed in escrow not later than December 31, 2002, and incurred by the licensee in accordance with a plan for subsequent decontamination, decommissioning, reclamation, and other remedial action approved by the Department.

In order to be reimbursable, such costs must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) (hereinafter "UMTRCA") or, where appropriate, with requirements established by a state pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act (42 U.S.C. 2021), hereinafter "Agreement State". In addition, claims for reimbursement of costs of remedial action must be supported by reasonable documentation as determined by the Department.

Section 1001(b)(2) of the Act (42 U.S.C. 2296a(b)(2)) limits the amount of reimbursement paid to any one licensee of an active uranium mill tailings site to an amount not to exceed $5.50 multiplied by the dry short tons of byproduct material located at the site on October 24, 1992, and generated as an incident of sales to the United States. Total reimbursement, in the aggregate, for work performed at active uranium sites shall not exceed $270 million. Total reimbursement for work performed at the active thorium site shall not exceed $40 million, and is limited to costs incurred for offsite disposal. Under sections 1001(b)(2)(D) and 1003(a) of the Act (42 U.S.C. 2296a(b)(2)(D) and 2296a–2(a)), the $5.50 per dry short ton limit on reimbursement to individual uranium site licensees and aggregate ceilings shall be subject to annual adjustment for inflation based upon an inflation index chosen by the Department.

B. Background

1. Overview of Uranium Processing Activity Licensed Under the Atomic Energy Act

The U.S. Army's Manhattan Engineer District, from 1942 to 1946, and later the Atomic Energy Commission (hereinafter "AEC"), from 1947 through 1970, entered into several contracts for the purchase of uranium concentrate to support the Nation's defense programs. Initially, four mills provided uranium for the Army, primarily through reprocessing radium and vanadium mill tailings. Eventually a total of 34 commercially operated mills produced uranium concentrate for sale to the United States Government.

These contracts were for the purchase of an agreed-upon quantity of uranium concentrate. Contract specifications addressed physical characteristics, grade, and impurities but did not include provisions for mill decommissioning, long-term management of the milling-process wastes, known as tailings, or stabilization of tailings piles. When these contracts were executed, the potential hazards of tailings were not fully recognized. Over the ensuing decades, however, potential radiological and chemical hazards associated with uranium and thorium mill tailings were identified and standards and requirements were developed for the control and management of tailings.

Between 1975 and 1979, the Department and the Energy Research and Development Administration, successor agencies to the AEC, completed studies of uranium mill sites that had produced uranium concentrate for the AEC, had subsequently ceased operations, and were considered inactive. These studies determined that uranium mill tailings located at these inactive uranium milling sites posed potentially significant health hazards to the public and that a program should be developed to ensure proper stabilization or disposal of these tailings to prevent or minimize radon diffusion into the environment and other related hazards.

2. Overview of Uranium Mill Tailings Radiation Control Act

As a result of these studies, in November 1978, Congress enacted UMTRCA, which authorizes the Department to undertake remedial action at "inactive" uranium milling sites and at vicinity properties contaminated with residual radioactive material[1] generated at a site. Inactive uranium milling sites are those which were no longer licensed under the Atomic Energy Act on January 1, 1978, and where all or substantially all of the uranium concentrate was produced for the Federal Government. The Department conducts remedial action in coordination with affected States and Indian tribes under cooperative agreements at 24 inactive sites.

In addition, UMTRCA established a program authorizing the United States Nuclear Regulatory Commission (hereinafter "NRC") to regulate mill tailings generated during processing operations at "active" processing sites (*i.e.*, sites with active licenses under the Atomic Energy Act on or after January 1, 1978) to ensure sound management of tailings throughout the production, reclamation and disposal phases.

3. Legislative Background

UMTRCA did not provide for payment of costs of remedial action incurred at active uranium processing sites which were contaminated with uranium mill tailings generated under Federal contract. Two reports prepared subsequently for Congress, by the Department in January 1979[2] and by the General Accounting Office in February 1979,[3] concluded that Federal assistance should be provided to licensees at these sites to address the cost of remediating mill tailings that were generated under contracts with the United States Government.

Congress directed the Department, through section 213 of Public Law 96–540, to develop a plan for establishing a cooperative program to provide Federal assistance in the stabilization and management of uranium mill tailings generated as an incident of sales to the United States Government which are commingled with other tailings. The Department was directed to identify, among other things, the amount of tailings generated under Federal contract at each active site. This determination was to be used to calculate the percentage of such tailings in relation to total tailings at each site, and the corresponding share of Federal assistance appropriate to meet the costs of stabilizing and managing tailings as required by Federal law.

Title X establishes the authority and framework for providing this Federal assistance. The Department is required to issue regulations governing reimbursement to licensees at active uranium and thorium processing sites for certain costs of remedial action. This final rule establishes the requirements and procedures under which the Department will implement this reimbursement program.

II. Response to Public Comments on the Proposed Rule

The Department's proposed rule was published on August 9, 1993 (58 FR 42450). A public hearing was held on September 14, 1993 in Denver, Colorado. A total of 16 written comments were received, of which four identical comments were also presented orally at the public hearing. Most of the comments concerned eligibility for reimbursement, reimbursable costs, determination of the Federal reimbursement ratio, definition of byproduct material, and claim documentation requirements. These and all other comments to the proposed rule are discussed below.

A. Eligibility for Reimbursement

Subject to certain specific limitations set forth in section 1001(b) of the Act (42 U.S.C. 2296(a)(b)), Title X requires the Department to reimburse licensees of active uranium or thorium processing sites for that portion of remedial action costs that may be attributed to byproduct material generated as an incident of sales to the United States. Parties eligible for reimbursement must be, or have been, licensed under section 62 or 81 of the Atomic Energy Act, and must have incurred costs of "decontamination, decommissioning, reclamation, or other remedial action" at an "active uranium or thorium processing site," as those terms are defined by Title X, sections 1004(3) and 1004(1), respectively (42 U.S.C. 2296a–3(3) and 2296a–3(1)). A number of comments were received requesting clarification or revision of the proposed rule's requirements concerning eligibility for reimbursement.

One commenter requested that the proposed rule's definition of "licensee" be changed to specifically include entities licensed by an Agreement State. Sections 1001(a) and (b) of the Act (42 U.S.C. 2296a(a) and (b)) require that the Department reimburse "persons licensed under section 62 or 81 of the

[1] The term "residual radioactive material" is defined by Section 101(7) of UMTRCA (42 U.S.C. 7911(7)) to mean: "(A) Waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock or unprocessed ores or low-grade materials."

[2] "Answers to Questions on Commingled Tailings at Currently Operating Uranium Ore Processing Mills That Produced Uranium Under Atomic Energy Commission Contracts" (Department of Energy, January 29, 1979).

[3] "Cleaning Up Commingled Uranium Mill Tailings: Is Federal Assistance Necessary" (General Accounting Office, EMD–79–29, U.S. Department of Commerce, February 5, 1979).

Atomic Energy Act of 1954." Both section 62 and section 81 confer licensing authority to AEC and its successor agency, the NRC.

However, NRC and a state may enter into an agreement pursuant to section 274 of the Atomic Energy Act which provides for discontinuance of the regulatory authority of the NRC under Chapters 6, 7, and 8, and section 161 of the Atomic Energy Act when the NRC finds, upon certification by the Governor, that the state's program is in all respects compatible with the NRC's program for the regulation of byproduct and source material. The discontinuance of NRC authority is coupled with the Agreement State's issuance of licenses pursuant to a counterpart to section 62 or 81 of the Atomic Energy Act, under state law.

If an Agreement State has received authority pursuant to a discontinuance agreement to issue licenses under either section 62 or section 81 of the Atomic Energy Act, recipients of an Agreement State-issued license, that was in effect or pending on January 1, 1978, are eligible to apply for reimbursement under Title X. In addition, some active site licensees have been subject to remedial action requirements established both by NRC and an Agreement State. Accordingly, the definition of "licensee" in the proposed rule has been revised to clarify that a person licensed under the authority of either section 62 or 81 of the Atomic Energy Act, by NRC, or under state law by an Agreement State, or both, is eligible to apply for reimbursement of costs of remedial action. This approach is consistent with, and reflected by, the definition of "active uranium or thorium processing site" in section 1004(1) of the Act (42 U.S.C. 2296a–3(1)), which specifies that the license for the production of uranium or thorium derived from ore may be issued by NRC, AEC, or by an Agreement State.

Several comments were also received concerning the proposed eligibility requirement that a licensee also be a "site owner" of an active processing site. These commenters pointed out that land ownership was not intended by Congress to be a requirement for reimbursement. One commenter indicated that ownership of the property on which its processing site is located is divided between private, Federal, and state parties. Other commenters were concerned that the intent of Title X would be contravened if land ownership was a condition of eligibility for reimbursement. These commenters suggested that land ownership could also be difficult to define and determine.

While section 1002 of the Act (42 U.S.C. 2296a–1) appears to contemplate that applications for reimbursements will be made by "a site owner," section 1001(b)(2)(A) of the Act (42 U.S.C. 2296a(b)(2)(A)) specifically refers to reimbursements paid "to any licensee," and the remainder of Title X is also drafted in terms of payments to licensees. The term site owner, as used in section 1002 (42 U.S.C. 2296a–1), is not defined nor is there any legislative history that sheds light on the single reference to "site owner" in section 1002. Consistent with apparent Congressional intent, the Department has interpreted the term "site owner" to include any person that currently holds, or held in the past, any interest in land, including but not limited to a fee simple absolute, surface or subsurface ownership of mining claims, easements, or a right of access for the purposes of remediation, or any other legal or equitable interest. The Department has concluded that this definition will encompass all eligible current and former licensees. To avoid unnecessary confusion, the term "site owner" is not used in the rule and the term "licensee" is used instead.

B. Costs Eligible for Reimbursement

Several commenters proposed changes to, or requested clarification of, the language in § 765.11(a) of the proposed rule concerning reimbursable costs and the definition of "costs of remedial action." The proposed rule defined such costs as those costs incurred by a licensee that were necessary to perform "decontamination, decommissioning, reclamation, and other remedial action." The phrase "decontamination, decommissioning, reclamation, and other remedial action" is defined by section 1004(3) of the Act (42 U.S.C. 2296a–3(3)), as well as the proposed rule, as work "necessary to comply with all applicable requirements of" UMTRCA or, where appropriate, with requirements established by an Agreement State.

Several commenters asked that the definition of "costs of remedial action" specifically include a list of cost categories that are eligible for reimbursement. Furthermore, some commenters suggested that this list should specifically include the cost of capital, cost of equipment, and interest that might have been earned over the period between the expenditure and reimbursement; administrative costs; and costs in implementing other environmental program requirements.

In response to these comments, the Department has revised the definition of "costs of remedial action" to include those activities specified in the Joint Explanatory Statement of the Committee of Conference that accompanied the enactment of Title X which states:

> Funds made available under this program are intended to be provided for all costs that result from the disposition of by-product [sic] material at active processing sites (subject to the limitations of sec. 1001(b)), including groundwater remediation, treatment of contaminated soil, disposal of process wastes, removal actions, air pollution studies, mill and equipment decommissioning, site monitoring, administrative expenses, and additional expenditures required by related standards and regulations." (H.R. CONF. REP. NO. 102–1018, 102d Cong., 2d Sess. 392 (1992))

Rather than further attempt to enumerate more precise activities and circumstances for which costs are reimbursable, the Department has determined that this issue should be resolved on a case-by-case basis, consistent with the statutory requirements. Section 1004(3) of the Act (42 U.S.C. 2296a–3(3)) limits reimbursement to costs for "work performed . . . which is necessary to comply" with UMTRCA or, where appropriate, with applicable Agreement State requirements. Therefore, whether work for which reimbursement is sought is necessary to comply with UMTRCA or, where appropriate, with applicable Agreement State requirements as required by section 1004(3) of the Act (42 U.S.C. 2296a–3(3)), will depend on specific circumstances that may vary from one site to the next.

However, in the absence of specific statutory authority, the Department has determined that the carrying cost of past expenditures or other costs of capital or lost interest are not eligible for reimbursement. Costs incurred for activities required by other Federal and state regulatory authorities may only be considered reimbursable if the activity falls within the final rule's definition of "decontamination, decommissioning, reclamation, and other remedial action." For example, the United States Environmental Protection Agency or a state regulatory authority may require a licensee to obtain a storm water discharge permit pursuant to the Clean Water Act before the licensee is able to conduct a remedial action. Therefore, a licensee may be able to demonstrate that the cost in obtaining and maintaining the a discharge permit is necessary to comply with UMTRCA or, where appropriate, with Agreement State requirements.

Administrative costs and other costs associated with cleanup or restoration of the site may be eligible for reimbursement provided that a licensee

can demonstrate that the costs were necessary to comply with the requirements of UMTRCA or, where appropriate, with applicable requirements of an Agreement State.

Several commenters construed the proposed rule to limit costs of remedial action to activities required by an approved site reclamation plan. These commenters requested that the rule be clarified to provide for reimbursement of other activities required by other written authorization from NRC or an Agreement State.

The final rule clarifies that costs for activities required by NRC or an Agreement State and established by a license condition or other authorization or directive may be eligible for reimbursement. The phrase "or other written authorization" is used throughout the final rule to specify that the activity may be authorized by the applicable regulatory authority by some mechanism other than an approved reclamation plan.

Several commenters requested that the final rule specify that costs incurred prior to the enactment of UMTRCA are reimbursable. This request is consistent with section 1001(b)(1) of the Act (42 U.S.C. 2296a(b)(1)), which provides that the Secretary shall reimburse a licensee for costs of decontamination, decommissioning, reclamation, and other remedial action which are attributable to byproduct material generated as an incident of sales to the United States and incurred by the licensee not later than December 31, 2002. Furthermore, section 1004(3) of the Act (42 U.S.C. 2296a–3(3)) specifies that the term "decontamination, decommissioning, reclamation, and other remedial action" means work performed that is necessary to comply with UMTRCA or, where appropriate, requirements established by an Agreement State.

Therefore, the final rule states that pre-UMTRCA costs may be eligible for reimbursement if the licensee can demonstrate and obtain the Department's approval that the work was necessary to comply with UMTRCA. A licensee can make this demonstration by providing a written authorization from the NRC or an Agreement State which indicates that the work performed by the licensee prior to the enactment of UMTRCA was necessary to comply with UMTRCA or, where appropriate, with applicable Agreement State requirements.

Some commenters objected to § 765.11(a) of the proposed rule, concerning the requirement that reimbursable costs must be for activities "contributing to final closure." These commenters were concerned that the applicable regulatory authority may revise an approved reclamation plan, license condition, or other directive for the remediation of the site. Under the proposed rule, a licensee's previously incurred costs of remedial action would not be reimbursable. The Department acknowledges this concern and has revised the final rule by deleting this requirement.

In addition, commenters objected to § 765.20 of the proposed rule which required licensees to certify that remedial action work was completed as required by a reclamation plan or other written authorization. These commenters were concerned that licensees might not be reimbursed prior to completion of remedial actions for individual tasks, as specified in an approved reclamation plan or other written authorization, upon the licensees completion of these tasks. The Department agrees with these commenters and notes that it is the Department's intent to reimburse these costs upon completion of the individual tasks instead of the entire remediation.

Finally, one commenter suggested that § 765.2(d) of the proposed rule be modified to clarify that expenses incurred as a result of an NRC directive, an Agreement State directive, or both, are eligible for reimbursement. A mill may have been regulated by both the NRC and an Agreement State during the mill's history, and may have therefore incurred costs for activities required by directives from both regulatory authorities. This commenter urged that references to "NRC or Agreement State" be revised to read "NRC and/or an Agreement State."

The Department has retained the proposed language but wishes to clarify that use of the phrase "NRC or an Agreement State" refers to NRC, an Agreement State, or both.

C. Determining the Federal Reimbursement Ratio

The proposed rule provided that the Department would establish a "Federal reimbursement ratio" to determine the portion of costs of remedial action attributable to byproduct material generated as an incident of sales to the United States. Under the proposed rule, the Federal reimbursement ratio would be the ratio of Federal-related dry short tons of byproduct material to total dry short tons of byproduct material present at each site on the date of enactment of Title X.

Some commenters suggested that the Department should allow licensees to use a method other than the proposed rule's tonnage or quantity-based approach to establish a site's Federal reimbursement ratio. These commenters argued that at some sites the tonnage-based Federal reimbursement ratio may not accurately reflect the true costs of remediation attributable to byproduct material generated as an incident of sales to the United States. These commenters also suggested that the rule allow greater flexibility in the methods available to determine the Federal reimbursement ratio. In particular, these commenters requested that the rule allow such ratio to be based on the acreage covered by Federal-related dry short tons of byproduct material compared to the total acreage covered by all dry short tons of byproduct material at the site.

Title X limits reimbursement to costs "attributable to" byproduct material generated as an incident of sales to the United States, but does not require a specific method for determining how to attribute costs to byproduct material generated as an incident of sales to the United States. Section 1001(b)(2)(A) of the Act (42 U.S.C. 2296a(b)(2)(A)) establishes a $5.50 per dry short ton of byproduct material limit on reimbursement. This indicates that the tonnage approach is an appropriate method for determining the Federal portion of remedial action costs. However, the tonnage approach may not, in some cases, most accurately reflect the portion of costs attributable to byproduct material generated as an incident of sales to the United States. As the Department recognized in the "Commingled Uranium Tailings Study, Volume II: Technical Report," (Department of Energy, June 30, 1982) different approaches for allocating costs attributable to byproduct material generated as an incident of sales to the United States may be appropriate, depending on the unique characteristics at each site.

Accordingly, the final rule has been revised to allow a licensee to demonstrate that an alternative method for determining the Federal reimbursement ratio, other than the tonnage approach, should be used. In order to make this demonstration, the final rule requires the licensee to demonstrate to the satisfaction of the Department that such alternative method is more accurate than the tonnage-based approach in delineating between costs of remedial action attributable to byproduct material generated as an incident of sales to the United States and costs attributable to other byproduct material at the site. Any licensee requesting that the Department consider an alternative approach for establishing a site's Federal

reimbursement ratio, must submit the request in writing, together with any information the licensee wants the Department to consider in support of the request. The Department reserves the right to approve or reject the alternative method, based on the Department's determination of whether such method may provide an effective, accurate, and verifiable means of attributing costs of remedial action for byproduct material generated as an incident of sales to the United States. Regardless of the methodology used to establish the Federal reimbursement ratio, the statutory ceiling on reimbursements to licensees will not change.

D. Definition of Byproduct Material and Dry Short Tons of Byproduct Material; and Determination of Reimbursement Ceiling at Each Active Uranium Processing Site

One commenter disagreed with the proposed rule's definition of "dry short tons of byproduct material." This commenter requested that the definition be expanded to include other wastes as well as tailings. For the reasons stated below, the Department has not adopted this approach.

Section 1001(b)(2)(A) of the Act (42 U.S.C. 2296(a)(b)(2)(A)) requires that the ceiling for uranium mill tailings sites shall not exceed an amount equal to $5.50 multiplied by the dry short tons of byproduct material onsite on the date of Title X's enactment and generated as an incident of sales to the United States. Although Title X incorporates by reference the Atomic Energy Act's definition of "byproduct material,"[4] the phrase "dry short ton of byproduct material" is not defined in either Act. While the definition of "byproduct material" could be read to suggest that the term includes wastes other than tailings, section 1001(b)(2)(A) of the Act (42 U.S.C. 2296a(b)(2)(A)) appears to use the phrase "uranium mill tailings" interchangeably in the same sentence with the phrase "byproduct material." The apparent interchangeable use of these terms is further reflected by the fact that House Bill 776[5], which ultimately was enacted, established a reimbursement limit of $5.50 per "dry short tons of byproduct *material*," (emphasis added) while the section-by-section analysis of the House Energy and Commerce Report[6] accompanying the bill described the limit as "$5.50 per dry ton for uranium *tailings*" (emphasis added).

Consequently, for the purposes of this rule's maximum reimbursement ceiling determination for active uranium processing site licensees and Federal reimbursement ratio for uranium and thorium licensees, the Department is defining the phrase "dry short ton of byproduct material" in the final rule to mean "the quantity of tailings generated from the extraction and processing of 2,000 pounds of uranium or thorium ore-bearing rock."

One commenter requested that the proposed definition of "tailings" be revised to conform to the definition established by section 101(8) of UMTRCA (42 U.S.C. 7911(8)). The Department agrees with this comment and has revised the definition accordingly.

The following table establishes the Department's determination as to the quantity of Federal-related dry short tons of byproduct material and total dry short tons of byproduct material present at each active uranium or thorium processing site as of October 24, 1992. The data from which these quantities are derived were obtained from the reports entitled "Commingled Uranium Mill Tailings Study, Volume II: Technical Report," (DOE, June 30, 1982) and "Integrated Data Base for 1992: U.S. Spent Fuel and Radioactive Waste Inventories, Projections, and Characteristics" (DOE/RW 0006, Rev. 8). In some cases, this data was updated based on the Department's review of quantity information provided by some licensees in response to the proposed rule. These quantity reports are available in the Department's Freedom of Information Reading Room indicated in the ADDRESSES section of this preamble. These quantities shall be the basis for the Department's determination of the Federal reimbursement ratio applicable to each active processing site, unless a licensee requests and the Department agrees to use an alternative method for computing the ratio. These quantities will also be the basis for the Department's determination of the individual maximum reimbursement ceiling applicable to each active uranium processing site.

Although Title X provides that the per dry short ton limit on reimbursement for each eligible uranium licensee shall not exceed an amount equal to $5.50, as adjusted for inflation, the Department is authorized to establish a lower per dry short ton limit if necessary. Based on the total quantity of 56.231 million Federal-related dry short tons of byproduct material, the Department is establishing an initial per dry short ton limit of $4.80. This is necessary because the aggregate $270 million statutory ceiling will not support the maximum allowable reimbursement of $5.50 per dry short ton, as established by the Act, if remedial action costs at all of the eligible uranium processing sites reach or approach this per dry short ton limit (*i.e.*, $270 million divided by 56.231 million Federal-related dry short tons of byproduct material equals $4.80 per dry short ton). The Department will adjust the preliminary limit on reimbursement accordingly when the $270 million statutory ceiling is adjusted annually for inflation or if other circumstances, as determined by the Department, enable the adjustment of the preliminary limit.

DRY SHORT TONS OF BYPRODUCT MATERIAL

[Millions]

Licensee/active uranium site	Federal related	Total	Federal reimbursement ratio
American Nuclear Corp., Gas Hills Mill Site, (Gas Hills, WY)	2.191	6.0	0.365
Atlantic Richfield Company, Blue Water Mill Site, (Grants, NM)	8.837	23.9	.370
Atlas Corp., Moab Mill Site, (Moab, UT)	5.946	10.6	.561
Cotter Corp., Canon City Mill Site, (Canon City, CO)	.315	2.2	.143
Dawn Mining Company, Ford Mill Site, (Ford, WA)	1.171	3.1	.378
Homestake Mining Company, Grants, Mill Site, (Grants, NM)	11.411	22.3	.512
Pathfinder Mines Corp., Lucky McMine, (Riverton, WY)	2.842	11.7	.243

[4] Section 1004(2) of the Act (42 U.S.C. 2296a-3(2)) provides that the term "byproduct material" has the meaning given that term in section 11e.(2) of the Atomic Energy Act, which defines "byproduct material" as "the tailings or wastes produced from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content."

[5] Section 1001(b)(2)(A) of H.R. 776, 102d Cong., 2d Sess. (1992).

[6] See H.REP. NO. 474, 102 Cong., 2d Sess. pt 1, at 205 (1992), *reprinted* in 1992 U.S.C.C.A.N. 2028.

DRY SHORT TONS OF BYPRODUCT MATERIAL—Continued

[Millions]

Licensee/active uranium site	Federal related	Total	Federal reimbursement ratio
Petrotomics Company, Shirley Basin Mill Site, (Shirley Basin, WY)	.725	6.3	.115
Quivira Mining Company, Ambrosia Lake Mill Site, (Grants, NM)	10.017	33.2	.302
Tennessee Valley Authority, Edgemont Mill Site, (Edgemont, SD)	1.625	2.0	.813
UMETCO Mineral Corp., Uravan Mill Site, (Nucla, CO)	5.701	10.5	.543
Union Carbide Corp., East Gas Hills Mill Site, (Gas Hills Station, WY)	2.103	8.0	.263
Western Nuclear, Inc., Split Rock Mill Site, (Jeffrey City, WY)	3.347	7.7	.435
Licensee/Active Thorium Site.			
Kerr-McGee Chemical, Corp., West Chicago, Thorium Mill Site, (West Chicago, IL)	0.032	.058	.552

E. Documentation Requirements

Section 765.20 of the proposed rule required that each claim for reimbursement of costs of remedial action be supported by adequate documentation. All costs for which reimbursement was sought and all supporting documentation were to be organized and cross-referenced to specific requirements or activities in an approved reclamation plan. Further, the proposed rule expressed a preference for documentation that was prepared contemporaneously to the time the costs were incurred.

A number of commenters questioned the use of the word "adequate" to describe the documentation necessary to support a claim for reimbursement. Section 1002 of the Act (42 U.S.C. 2296a–1)) requires a licensee to submit a claim together with "reasonable" documentation. In the final rule, the word "adequate" has been replaced with "reasonable" in § 765.20(a) to make the language of the rule consistent with that of Title X.

The proposed rule also generated several comments concerning the amount and type of documentation necessary. Many commenters contended that the documentation requirements were unduly burdensome. Several commenters recommended that the Department consider accepting a summary of the available documentation, while reserving the right to audit the actual documentation at the licensee's facility.

As a result of these comments, the Department has modified the documentation requirements in the final rule to specifically permit the submission of claims that summarize the supporting documentation, without requiring the submission of all supporting documentation with the claim itself. Under the final rule, licensees may submit a claim which outlines all costs of remedial action for which reimbursement is sought and summarizes the documentation available to support the claim. The Department may audit or may require the licensee to audit, on a case-by-case basis, any documents used in support of a claim. Under the final rule, licensees are still required to organize and cross-reference summary documentation supporting a claim to the activity or requirement established in the reclamation plan, or other written authorization for both pre- and post-UMTRCA costs of remedial action, in order to facilitate such an audit. These documents also must be retained by each licensee until 4 years after final payment of a claim is made by the Department, access to which must be made available to the Department upon request.

In addition, many commenters indicated that contemporaneous documentation might not be available to support claims. Various reasons, including the passage of time since costs were incurred, were provided to support the request that non-contemporaneous documentation be permitted to support the claim for reimbursement.

The proposed rule did not prohibit the use of non-contemporaneous documentation. Instead it established a preference, but not a requirement, for contemporaneous documentation. The final rule has been clarified to indicate that documentation prepared contemporaneous to the time the costs were incurred should be used where available. To support a claim for reimbursement, the most appropriate documentation, but not the only acceptable documentation, is documentation that was prepared contemporaneous to the time the cost was incurred. If contemporaneous documentation is not available, § 765.20(d)(2) provides that non-contemporaneous documentation may be submitted, provided that the documentation is the only means available to document the costs for which reimbursement is sought. This approach reflects the Department's understanding that Title X establishes a test of reasonableness regarding the level of documentation necessary to support a claim for reimbursement. The level of documentation that reasonably can be expected will depend on the specific circumstances involved in each claim, including the time that has elapsed since the costs were incurred and the activity for which costs were incurred. The Department intends to evaluate each claim on a case-by-case basis using this standard of reasonableness.

Some commenters requested that § 765.20(e) of the proposed rule be revised to exclude the requirement that the licensee certify that a quality assurance program was implemented. The Department has determined that this certification is not required by the Act, but rather is a responsibility of NRC or an Agreement State. Therefore, this requirement has been deleted from the final rule.

Finally, one commenter encouraged the Department to provide a standardized claims format guide so that guidance for preparing claims will be available to licensees when the rule is finalized. The Department is preparing guidance to aid licensees in claim submission procedures. This guide will be distributed to eligible licensees shortly after publication of the final rule. In addition, the guide will be made available to other interested parties upon written request to the Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 2155 Louisiana NE., suite 10000, Albuquerque, NM 87110, or by visiting the Department of Energy's Freedom of Information Reading Room, 1000 Independence Avenue SW., Washington, DC, from 9:30 a.m. to 4:30 p.m., Monday through Friday.

F. NRC or Agreement State Concurrence

Several commenters objected to the provision in § 765.21(d) of the proposed rule requiring NRC or Agreement State concurrence in the reimbursement claim

approval process. These commenters asserted that involving the NRC or Agreement States in the process will cause undue delay. Furthermore, commenters argued that the Department's review will be adequate because of the Department's experience with UMTRCA Title I sites and because approved reclamation plans, or other written authorization for both pre- and post-UMTRCA costs, will be submitted to support claims for reimbursement. Some commenters argued that NRC or Agreement State concurrence is unnecessary for those claims that fall clearly within the scope of an approved plan or license condition. However, another commenter strongly supported the requirement for written certification from NRC or an Agreement State that claims be substantially in conformance with NRC or Agreement State authorization.

As discussed elsewhere in this preamble, section 1004(3) of the Act (42 U.S.C. 2296a–3(3)) requires that remedial action costs for which reimbursement is claimed must be for work "necessary to comply with all applicable requirements" of UMTRCA or, where appropriate, with applicable requirements established by an Agreement State. Whether work is necessary to comply with UMTRCA or Agreement State requirements often may be determined, at least in part, by a review of a site's approved reclamation plan or other written authorization. Licensees are required to link each cost of remedial action for which reimbursement is claimed to a specific element or activity contained in an approved reclamation plan or other NRC or Agreement State authorization for both pre- and post-UMTRCA costs. This will facilitate the Department's review of claims, and help to ensure that reimbursement is made only for costs incurred for activities necessary to comply with UMTRCA or, where appropriate, with applicable Agreement State requirements.

There may be situations, nevertheless, where the Department's review of the site's reclamation plan or other written authorization does not confirm that an activity for which reimbursement is claimed was necessary to comply with UMTRCA or, where appropriate, Agreement State requirements. To address these situations, § 765.21(d) of the proposed rule provided that before approving a claim for reimbursement, the Department would request NRC or the Agreement State to review the claim and provide written concurrence that the activities for which reimbursement is claimed are "substantially in conformance with the licensee's approved reclamation plan."

In response to the concerns raised by commenters, however, the Department has revised the requirement for NRC or Agreement State written concurrence. When it is not clear from a comparison of a claim and the approved site reclamation plan or other written authorization that an activity for which reimbursement is sought was necessary to comply with UMTRCA or, where appropriate, with applicable Agreement State requirements, the Department will consult with the appropriate regulatory authority to determine whether the activity was necessary to comply with these requirements.

In addition, some commenters urged that § 765.21(c) of the rule explicitly provide licensees with a right to attend and participate in informal conferences between Department and NRC or Agreement State personnel concerning a claim for reimbursement. The Department has decided not to adopt this approach. The claim submittal and review process provide a licensee with ample opportunity to present any relevant information or clarification necessary for the Department to be fully informed in reviewing and acting upon a claim. In addition, the Department may, at its discretion, provide a licensee with additional opportunities to clarify any issues which could arise with regard to a claim prior to reaching a final decision. However, to conform with the above revision to § 765.21(d) the Department has deleted the reference to the informal conference with NRC or an Agreement State in § 765.20(c). Any informal conference would be conducted as part of the Department's consultation with these regulatory agencies pursuant to §765.21(d).

G. Reimbursement of Costs of Subsequent Remedial Action

Section 765.30 of the proposed rule required licensees seeking reimbursement of costs after December 31, 2002 to submit a subsequent plan for remedial action to the Department in accordance with section 1001(b)(1)(B)(ii) of the Act. Specifically, reimbursement of costs incurred after December 31, 2002 would be subject to Department's approval of a plan containing: (1) Applicable remedial action requirements established by NRC or an Agreement State pursuant to UMTRCA that had not yet been satisfied by the licensee; and (2) the total cost of remedial action required at the site, with supporting documentation, segregated into actual costs incurred and anticipated future costs.

Several commenters indicated that the proposed rule provided inadequate guidance on the criteria the Department will use in approving a subsequent plan for remedial action. Specifically, these commenters construed proposed § 765.30(c) to mean that the Department would, if necessary, require a licensee to make changes to a reclamation plan approved by NRC or an Agreement State. In addition, some of these commenters claimed that the Department's review should be limited to matters of schedule.

The Department did not intend the proposed rule to require a licensee to make any changes to a reclamation plan approved by NRC or an Agreement State. On the other hand, the statutory authority to review and approve such plans is by no means limited to the scheduling of subsequent remedial action. To clarify the scope and purpose of this review, § 765.30(c) has been revised to state that the intended purpose of the Department's review is to determine conformance with an NRC- or Agreement State-approved reclamation plan, as well as the reasonableness of anticipated future costs.

Several commenters requested that the Department clarify in § 765.30(b) of the proposed rule the time in which it would approve a subsequent plan for remedial action which was previously rejected by the Department and modified by a licensee.

The final rule has been revised to provide that a licensee may continue to resubmit a subsequent plan for remedial action until the Department approves the plan or September 30, 2002, whichever date is earlier. This deadline for submission of plans provides sufficient time for a licensee to resubmit such a plan. It also allows the Department sufficient time to review and approve the plan and to designate by December 31, 2002 available amounts deposited in the Uranium Enrichment Decontamination and Decommissioning Fund, an escrow account established at the United States Treasury Department pursuant to section 1801 of the Act (42 U.S.C. 2297(g)), for reimbursement.

Some of these commenters requested that the Department allow for the reimbursement of remedial action costs incurred after December 31, 2002 for plans which have been submitted, but not yet approved by the Department, before this date. The Department does not have statutory authority to reimburse licensees for costs of remedial action after December 31, 2002 for which a plan has not been approved. Therefore, the final rule does not allow for the reimbursement of remedial costs

incurred after December 31, 2002, for those plans which have not been approved by this date.

One commenter questioned how the Department intends to address costs incurred prior to December 31, 2002, but not yet approved by the Department at the time the plan is submitted by the licensee.

To ensure that all incurred and future costs of remedial action are included in a subsequent plan for remedial action, the Department has revised § 765.30(b)(2) to include a third category of costs: Those costs incurred or expected to be incurred prior to December 31, 2002. This category includes those costs incurred prior to December 31, 2002 but not yet submitted in a claim for reimbursement, or approved by the Department.

Finally, many commenters requested that §§ 765.20(e) and 765.30(b)(2) of the proposed rule eliminate the provision that claims for reimbursement will be reviewed by the Department to assure that the costs are consistent with the surety requirements provided by the licensees to NRC or an Agreement State. These commenters argued that there are many significant differences between the anticipated costs upon which the surety requirements are based and the anticipated costs contained in plans for subsequent remedial action. These commenters also noted that in some circumstances the surety may not take into consideration all costs that may be reimbursed under Title X.

The Department acknowledges these concerns and has eliminated the surety requirement in the final rule. To conform with this change, the Department has deleted the definition of "surety requirements" contained in § 765.3 of the proposed rule.

H. Actions Subject to Appeals Procedures

Section 765.22 of the proposed rule provided procedures for appealing the Department's determination concerning the total dry short tons of byproduct material quantity and Federal-related dry short tons of byproduct material quantity present at a site. Although proposed § 765.22 provided licensees the opportunity to appeal the Department's dry short tons of byproduct material quantity determination, several commenters argued that proposed § 765.10(b), which required a licensee to either concur with the Department's determination or waive or exhaust its right of appeal prior to submitting a claim for reimbursement, effectively forced licensees to forego their right of appeal to obtain timely reimbursement. These commenters expressed concern that licensees would be unfairly penalized if denied reimbursement during the potentially lengthy appeals period.

The Department agrees with these commenters and has eliminated the requirement that a licensee waive its right of appeal with respect to a quantity determination of dry short tons of byproduct material prior to submitting a claim. However, in order to define the Federal reimbursement ratio that the Department will use to calculate reimbursement, the Department must, prior to providing any reimbursement to a licensee, make a determination concerning the total and Federal-related dry short tons of byproduct material quantities present at each site on October 24, 1992. Therefore, although under the final rule a licensee may submit a claim for reimbursement while appealing the Department's dry short tons of byproduct material quantity determination, the appeal must be made within 45 days after receiving notice of such determination. The 45-day limit provides a licensee with the right to appeal without foregoing the right to timely reimbursement and helps ensure that the Department is able to make the determinations necessary for orderly administration of the reimbursement program.

Under § 765.10(b), the Department's dry short tons of byproduct material quantity determinations will be used to calculate that portion of an approved claim that will be reimbursed. If the licensee's appeal of the Department's initial determination is successful, the difference between the initial quantity determination and that established by the appeals process will be paid to the licensee.

Some commenters noted that the proposed rule did not provide a licensee an opportunity to appeal the Department's decision concerning plans for subsequent remedial action, as well as other determinations required by this rule. This omission in the proposed rule was unintentional. Section 765.22 has been revised and streamlined in the final rule to allow appeals of any Department determination required by this rule, including a decision to reject or modify a plan for subsequent remedial action. While the decision to appeal a Department determination associated with this rule lies in the discretion of each eligible licensee, the rule requires that any appeal comply with the appeals process specified in § 765.22.

I. Miscellaneous Comments

Under § 765.3 of the proposed rule, the definition of "offsite disposal" refers to disposal of byproduct material from the sole existing thorium mill site pursuant to a plan approved by, or written authorization from, the Illinois Department of Nuclear Safety or other appropriate state agency. One commenter urged that the specific reference to the Illinois Department of Nuclear Safety be deleted from the definition in the event of a name change or revision of responsibilities of that agency, and the definition also include approvals and authorizations from the NRC. The Department has determined that the language of Title X does not limit reimbursement for offsite disposal to activities required by a specific state regulatory authority. Therefore, the definition of "offsite disposal" in the final rule has been modified to include activities required by the NRC or the State of Illinois.

Another commenter suggested that the Department consider making partial provisional advance payments to licensees, subject to an audit of expenditures. The Department does not have the statutory authority to make partial provisional advance payments.

A number of commenters suggested that the Department clarify how available funds will be disbursed if there are insufficient funds for full payment of all claims. Language in the proposed rule did not explicitly specify the priority for disbursement of funds among claims submitted by different review submission deadlines established by the Department. The final rule has been revised to specify that, if funds available are insufficient to make full payment in any given review cycle, all outstanding approved claims will be reimbursed on a prorated basis, regardless of when the claims were submitted or approved. This approach is consistent with the requirement of Title X that reimbursements be made to licensees at least annually.

Commenters also requested that claims be processed and paid twice a year. Title X requires that licensees be reimbursed at least annually. Therefore, the Department intends to provide payments to the licensees on at least an annual basis, but the Department is not prepared to commit in the rule to a more frequent reimbursement schedule.

The Department has modified § 765.20(a) and (d) of the proposed rule to clarify that the claim submission deadline(s) for a given year will be announced in the **Federal Register** shortly after the annual appropriation of funds by the Congress. To ensure an equitable distribution of annual appropriations, DOE will make payments for approved costs of remedial

action from the Fund within one year of the claim submission deadline.

Some commenters also urged the Department to modify the proposed rule's application of the inflation index adjustment provided in § 765.12 for claims approved for reimbursement. Some commenters argued that claims for reimbursement should be adjusted for inflation from the date the costs were incurred until the date of reimbursement. Others thought that an inflation adjustment should be made for the period between the submission or approval of a claim and the date of reimbursement.

Section 1001(b)(2)(D) of the Act (42 U.S.C. 2296(a)(b)(2)(D)) specifies the authority provided to the Department to adjust certain amounts for inflation. While the Secretary is given discretion to determine the appropriate inflation index to apply, this section dictates the amounts that are subject to adjustment for inflation. Congress explicitly and unequivocally limited the application of the inflation index to "the amounts in subparagraphs (A), (B), and (C) of this paragraph [section 1001(b)(2) of the Act]" (42 U.S.C. 2296a(b)(2)(D)). The amounts in subparagraphs (A), (B), and (C) of paragraph 1001(b)(2) are $5.50, $270,000,000, and $40,000,000, respectively. The Department is not authorized to adjust for inflation any claims for reimbursement. As a result, the approach taken in the proposed rule has been retained in the final rule.

In addition to the revisions discussed above, the Department also made minor clarifying or editorial changes to the proposed rule which are not specifically discussed in this preamble.

III. Section-By-Section Analysis

A. Subpart A—General

1. Section 765.1 Purpose

Section 765.1 specifies that the purpose of this rule is to establish procedures and requirements governing the reimbursement of remedial action costs authorized by Title X of the Act. The section confirms that the rule is promulgated as required by section 1002 of the Act (42 U.S.C. 2296a–1).

2. Section 765.2 Scope and Applicability

Section 765.2 describes the general scope and applicability of the rule. In particular, the section provides that reimbursements shall be made to a licensee of an active uranium or thorium processing site for costs of decontamination, decommissioning, reclamation, or other remedial action, which are supported by reasonable documentation and determined by the Department to be attributable to byproduct material generated as an incident of sales to the United States. Costs of decontamination, decommissioning, reclamation, and other remedial action must be for work that is necessary to comply with the requirements of UMTRCA or, where appropriate, with applicable requirements established by an Agreement State. Moreover, except as provided by § 765.32, reimbursement of a uranium site licensee shall be limited to $5.50, as adjusted for inflation, per Federal-related dry short ton of byproduct material. The total reimbursement paid to all uranium licensees shall not exceed $270 million, as adjusted for inflation. Reimbursement of the thorium site licensee shall not exceed $40 million, as adjusted for inflation.

3. Section 765.3 Definitions

Section 765.3 defines the acronyms and key terms used in the rule. Many of the definitions contained in § 765.3 are taken verbatim, or with minor changes, from Title X, UMTRCA, or the Atomic Energy Act. Additional definitions, discussed below, were developed specifically for this rule.

The term "active uranium or thorium processing site" or "active processing site" means:

(1) any uranium or thorium processing site, including the mill, containing byproduct material for which a license, issued either by NRC or by an Agreement State, for the production at such site of any uranium or thorium derived from ore—

(i) was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978; or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and

(2) any other real property or improvement on such real property that is determined by the Secretary or by an Agreement State to be:

(i) in the vicinity of the site; and

(ii) contaminated with residual byproduct material.

The term "Agreement State" means a State that is or has been a party to a discontinuance agreement with NRC under section 274 of the Atomic Energy Act (42 U.S.C. 2021) and thereafter issues licenses and establishes remedial action requirements pursuant to a counterpart to section 62 or 81 of the Atomic Energy Act under state law.

The term "Atomic Energy Act" means Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011 *et seq.*).

The term "byproduct material" means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

The term "claim for reimbursement" is defined as the submission of an application for reimbursement in accordance with the requirements established in subpart C of this rule.

The term "costs of remedial action" means costs incurred by a licensee prior to or after enactment of UMTRCA to perform decontamination, decommissioning, reclamation, or other remedial action. These costs must be substantiated by documentation in accordance with the requirements of Subpart C of the rule. Costs of remedial action may include, but are not limited to, ground water remediation, treatment or containment of contaminated soil, disposal of process wastes, removal actions, air pollution abatement measures, mill and equipment decommissioning, site monitoring, administrative activities directly related to remedial action, expenditures required to meet necessary regulatory standards, and other costs for activities necessary to comply with the requirements of UMTRCA or applicable requirements established by an Agreement State.

The term "decontamination, decommissioning, reclamation, and other remedial action" means work performed which is necessary to comply with all applicable requirements of UMTRCA or, where appropriate, with applicable requirements established by an Agreement State.

The term "Department" means the United States Department of Energy or its authorized agents.

The term "dry short ton of byproduct material" is defined as the quantity of tailings generated from the extraction and processing of 2,000 pounds of uranium or thorium ore-bearing rock.

The term "Federal reimbursement ratio" means the ratio of Federal-related dry short tons of byproduct material to total dry short tons of byproduct material present at an active uranium or thorium processing site on October 24, 1992. The ratio shall be established by comparing Federal-related dry short tons of byproduct material to dry short tons of total byproduct material present at the site on October 24, 1992, or by another means of attributing costs of remedial action to byproduct material generated as an incident of sales to the United States which the Department determines is more accurate than a ratio established using dry short tons.

The term "Federal-related dry short ton(s) of byproduct material" is defined as the dry short ton(s) of byproduct material present at the site on October

24, 1992 that was generated as an incident of sales to the United States.

The term "generally accepted accounting principles" means those principles established by the Financial Accounting Standards Board which encompass the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time.

The term "inflation index" is defined as the consumer price index for all urban consumers (CPI–U) as published by the Department of Commerce's Bureau of Labor Statistics.

The term "licensee" includes any site owner licensed under section 62 or 81 of the Atomic Energy Act by either NRC, or an Agreement State.

The terms "maximum reimbursement amount or maximum reimbursement ceiling" means the smaller of the following two quantities: (1) The amount obtained by multiplying the total cost of remedial action at the site, as determined in the approved plan for subsequent remedial action, by the Federal reimbursement ratio established for the site; or (2) $5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material.

The term "NRC" means the United States Nuclear Regulatory Commission or its predecessor agency.

The term "offsite disposal" is defined as the decontamination, decommissioning, reclamation and other remedial action associated with disposal of byproduct material in a location not contiguous to the West Chicago Thorium Mill Site. This includes activities required by the State of Illinois, or NRC provided these activities are consistent with the ultimate removal of byproduct material from the West Chicago Thorium Mill Site.

The term "plan for subsequent remedial action" is defined as a plan approved by the Department, which includes an estimated total cost for remedial action and all applicable requirements of remedial action established by NRC or an Agreement State to be performed after December 31, 2002 at an active uranium or thorium processing site.

The terms "reclamation plan" or "site reclamation plan" means a plan approved by NRC or an Agreement State that establishes the work necessary to comply with UMTRCA or where appropriate applicable Agreement State requirements.

The term "remedial action" means decontamination, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site.

The term "Secretary" means the Secretary of Energy or her designees.

The term "site owner" is defined as a person that presently holds, or held in the past, any interest in land, including but not limited to a fee simple absolute, surface or subsurface ownership of mining claims, easements, and a right of access for the purposes of cleanup, or any other legal or equitable interest.

The term "tailings" is defined as the remaining portion of a metal-bearing ore after some or all of the metal, such as uranium, has been extracted.

The term "the Fund" means the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act (42 U.S.C. 2297g).

The term "Title X" or "the Act" means Subtitle A of Title X of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (42 U.S.C. 2296a–1 *et seq.*).

The term "UMTRCA" means the Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901 *et seq.*).

The term "United States" means any executive department, commission, or agency, or other establishment in the executive branch of the Federal Government.

The term "written authorization" means a written statement from either the NRC or an Agreement State that a licensee has performed in the past, or is authorized to perform in the future, a remedial action that is necessary to comply with the requirements of UMTRCA, or where appropriate with applicable Agreement State requirements.

B. Subpart B—Reimbursement Criteria

1. Section 765.10 Eligibility for Reimbursement

Section 765.10 outlines the basic eligibility requirements governing reimbursement. In particular, as required by section 1001 of the Act (42 U.S.C. 2296a), § 765.10 specifies that licensees shall be eligible for reimbursement of certain costs of remedial action, subject to the procedures and limitations specified in this rule.

Section 765.10(a) of the rule provides that costs of remedial action attributable to byproduct material generated as an incident of sales to the United States are reimbursable. Section 765.10(b) states that prior to reimbursement, the Department must determine the number of total dry short tons of byproduct material present at the site on October 24, 1992 and Federal-related dry short tons of byproduct material. This section provides that these determinations are subject to the appeals procedures specified in the rule. Provisions are made concerning reimbursement in the event of an appeal.

2. Section 765.11 Reimbursable Costs

Section 765.11 defines the requirements that a licensee must meet to be reimbursed for costs of remedial action at its active uranium or thorium processing site. Reimbursable costs of remedial action must be incurred prior to December 31, 2002, or be in accordance with a plan for subsequent remedial action approved by the Department. These costs of remedial action shall be reimbursed only if supported by reasonable documentation and approved by the Department in accordance with this rule. This documentation must demonstrate that the costs of remedial action incurred by a licensee are necessary to comply with applicable requirements of UMTRCA, or, where appropriate, with requirements established by an Agreement State. These requirements are contained in a reclamation plan, or other written authorization, issued or approved by NRC or an Agreement State, for work performed prior to or after enactment of UMTRCA. In addition, costs of remedial action are reimbursable only if the Department determines that they are attributable to byproduct material generated as an incident of sales to the United States and present at the site on October 24, 1992. These costs are equal to the total costs of remedial action at a site multiplied by the Federal reimbursement ratio established for the site, and approved by the Department for reimbursement.

Section 765.11 limits the amount of reimbursement paid to any one licensee of an active uranium processing site to an amount not to exceed $5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material. Total reimbursement in the aggregate of uranium site licensees is limited to $270 million, as adjusted for inflation. Reimbursement of costs of remedial action at the eligible thorium processing site may only be made for costs incurred for offsite disposal, and is limited to $40 million, as adjusted for inflation.

3. Section 765.12 Inflation Index Adjustment Procedures

Title X directs the Department to determine an appropriate inflation index by which to increase annually (1) The $5.50 per dry short ton of byproduct material limit on

reimbursement to individual uranium site licensees, (2) the amount of $270 million authorized for payment to active uranium processing site licensees, (3) the amount of $40 million authorized for payment to the active thorium processing site licensee, and (4) the aggregate amount of $310 million authorized for payment to all licensees by Title X. As discussed elsewhere in this preamble, the Department intends to use the Consumer Price Index-Urban (CPI–U) as the appropriate inflation index for these adjustments. Section 765.12 of the rule provides that the CPI–U will be used to adjust these amounts annually beginning in 1994, to account for inflation that occurred in the previous calendar year.

C. Subpart C—Procedures for Filing and Processing Reimbursement Requests

Subpart C establishes the procedures for preparing and processing reimbursement claims. These procedures are designed to ensure that all information the Department needs to review a claim is made available to the Department, that claims are evaluated on a consistent basis, and that claims are processed in an efficient and equitable manner.

1. Section 765.20 Reimbursement Request Filing Procedures

Section 765.20 of the rule establishes the filing procedures, content, and format that a licensee must follow when submitting a claim for reimbursement. Each claim for reimbursement of remedial action costs must be supported by reasonable documentation.

A copy of the licensee's approved reclamation plan or other written authorization from NRC or an Agreement State must be submitted with the initial claim. Any revisions to this plan or authorization by NRC or an Agreement State must be submitted with the next claim prepared following approval of the revision. Each claim must provide a summary of all costs of remedial action for which reimbursement is claimed. The summary of costs must identify the pre- and post-UMTRCA costs associated with each major activity or requirement established by the site's reclamation plan or other written authorization.

The claim for reimbursement must also include a summary of the documentation available to support the claim. All summary documentation used in support of a claim must be cross-referenced to the relevant page and activity of the licensee's reclamation plan or other written authorization for pre- and post-UMTRCA costs. All documentation used in support of a claim must be made accessible to the Department, and the documentation should demonstrate that each cost for which reimbursement is claimed was incurred for a pre- or post-UMTRCA specific activity included in a reclamation plan or other written authorization, approved by NRC or an Agreement State. Where available, invoices, payroll records, receipts, and other documents should be used by the licensee to support claims for reimbursement. The rule requires licensees to utilize documents that were prepared contemporaneous to the time the cost which they support was incurred, whenever these documents are available. Documents prepared substantially after the cost was incurred will be considered by the Department in reviewing claims if that documentation is the only means available to document costs for which reimbursement is sought. The Department may audit, or require a licensee to audit, any documentation used to support a claim on a case-by-case basis and will exercise its discretion in determining the weight to accord to various supporting documents.

2. Section 765.21 Processing Reimbursement Requests

Section 765.21 outlines the procedures to be followed by the Department in processing each claim for reimbursement.

Sections 765.21 (a)–(c) provide that the Department will conduct a preliminary review of each claim within 60 days of the claim submittal deadline to determine if additional information is necessary. The Department may audit documentation used in support of the claim or request additional information or clarification necessary to verify any information provided by the licensee in a claim for reimbursement. In addition, the Department may request an informal conference with the applicant and, if necessary, with NRC or an Agreement State, to obtain information or clarification concerning any aspect of a claim. While the applicant is not required to provide additional information or clarification requested by the Department, a failure to do so may result in the denial of that portion of the claim for which information is requested.

The Department will conduct a final review of all relevant information to make a reimbursement decision. The Department will notify the claimant of its decision regarding a claim within 10 days of completing the final review.

Sections 765.21 (f)–(g) discuss the timing for processing and for payment of reimbursement requests. Reimbursements will be made on a prorated basis if there are insufficient funds available to reimburse all claims in full. Amounts not initially disbursed will be paid on a prorated basis, until satisfied in full, as funds become available. All outstanding, approved claims will be paid on the same prorated basis, regardless of when the claim was submitted or approved. Payments will be provided from the Fund, as required by the Act. Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341) as specified by § 765.21(g) of this rule. Following each annual appropriation by Congress, the Department will issue a Federal Register notice informing licensees of the availability of funds for reimbursement and whether the Department anticipates that approved claims for that year may be subject to prorated payment.

Section 765.21(h) requires an officer or other authorized official of a licensee to certify the accuracy of a claim for reimbursement, and subjects the individual making the certification to Federal statutes which provide civil and criminal penalties for making false claims.

3. Section 765.22 Appeals Procedures

Section 765.22 requires a licensee to utilize the Department's administrative appeals process (see 10 CFR part 205, subpart H) to appeal any Department determination required by this rule, including decisions that: (1) Determine tailings quantities of dry short tons of byproduct material or the Federal reimbursement ratio; (2) deny, in whole or in part, any claim for reimbursement; or (3) require modification of or reject a plan for subsequent remedial action. Any appeal must be filed with the Department's Office of Hearing and Appeals (hereinafter "OHA") within 45 days after the licensee receives notice, actual or constructive, (*i.e.*, by a publication in the **Federal Register**) of the Department's determination. OHA is a quasi-judicial body that reports to the Secretary of Energy and, except as otherwise provided by law, is responsible for conducting informal adjudicative proceedings of the Department, where there is a provision for separation of function. In connection with these duties, OHA holds hearings, receives evidence, develops a record, and issues a final determination, which is the Department's final decision, subject to review in the federal courts. A licensee must file an appeal in order to exhaust its administrative remedies, and the receipt of an OHA decision is a prerequisite to seeking judicial review

of any determination made under this Part.

4. Section 765.23 Annual Report

The Department will prepare an annual report, available to the public, summarizing pertinent information from the preceding year regarding the reimbursement program. The information may include, but not be limited to, individual and aggregate reimbursement claims approved and paid, approval of plans for subsequent remedial action, completion of particular elements of remedial action at active sites, total amounts paid and remaining for reimbursement, and other information. Licensees should be aware that any information submitted in a claim for reimbursement may be subject to public disclosure, through the annual report as well as by specific request, in accordance with the Freedom of Information Act (5 U.S.C. 552) and all other applicable requirements.

Subpart D—Additional Reimbursement Procedures

1. Section 765.30 Reimbursement of Costs Incurred in Accordance with a Plan for Subsequent Remedial Action

Section 765.30 of Subpart D establishes procedures for reimbursement of costs incurred in accordance with a plan for subsequent remedial action approved by the Department.

Reimbursement of costs incurred after December 31, 2002 shall be subject to the submission by the licensee of a plan for subsequent remedial action and approval of the plan by the Department. Each licensee seeking reimbursement of costs of remedial action to be incurred after December 31, 2002 shall submit their plan to the Department for its review and approval at any time between January 1, 2000 and December 31, 2001. The plan must include an estimated total cost and schedule for remedial action as well as all applicable requirements of remedial action established by NRC or an Agreement State to be performed after December 31, 2002 at an active uranium or thorium processing site. Each licensee will be required to provide reasonable documentation or other information to support its estimate of costs to be incurred.

The Department may approve, approve with modification, or reject any plan submitted by a licensee. At any time following submittal of a plan, the Department may request additional information from the licensee, and may consult with NRC or an Agreement State concerning remaining remedial action requirements contained in the site's approved reclamation plan. If the Department rejects a plan, the licensee may file an appeal pursuant to § 765.22 or submit revised plans for review by the Department, until a plan is approved, or until September 30, 2002, whichever occurs first. The Department has established September 30, 2002, as the deadline for submission of any potential revised plans so that the Department will have sufficient time to review the submittals and designate available amounts on deposit in the Fund for reimbursement by December 31, 2002 consistent with section 1001(b)(1)(B)(ii) of the Act (42 U.S.C. 2296a(b)(1)(B)(ii)). A failure by a licensee to receive approval from the Department of a plan for subsequent remedial action prior to December 31, 2002 will preclude that licensee from receiving any reimbursement for costs incurred after that date. Costs incurred in accordance with the requirements of a plan for subsequent remedial action, and approved by the Department, will be reimbursed in an amount equal to the approved cost multiplied by the site's Federal reimbursement ratio, until such time as the Department determines that its obligation under Title X to reimburse the licensee has been satisfied.

2. Section 765.31 Designation of Funds Available for Subsequent Remedial Action

Section 765.31 establishes procedures for reimbursement of costs incurred in accordance with an approved plan(s) for subsequent remedial action.

Upon approval of each plan submitted by a licensee, and subject to the availability of appropriated funds and the requirements of the Anti-Deficiency Act (31 U.S.C. 1341), the Department will designate amounts deposited in the Fund at the United States Department of Treasury, established pursuant to section 1801 of the Atomic Energy Act (42 U.S.C. 2297g), to reimburse a licensee for estimated costs of remedial action in implementing a Department-approved plan for subsequent remedial action.

3. Section 765.32 Reimbursement of Excess Funds

Section 1001(b)(2)(E)(i) of the Act (42 U.S.C. 2296a(b)(2)(B)(i)) authorizes the Department to determine, as of July 31, 2005, whether the aggregate amount authorized to be appropriated by section 1003 of the Act (42 U.S.C. 2296a–2) when considered with the $5.50 per dry short ton limit on reimbursement, as adjusted for inflation, for active uranium processing site licensees, exceeds the amount reimbursable to licensees under section 1001(b)(2) of the Act (42 U.S.C. 2296a(b)(2)). If any active uranium processing site licensee incurs reimbursable costs in excess of $5.50 per dry short ton limit on reimbursement, and the Department has determined that excess funds exist as of July 31, 2005, section 1001(b)(2)(E)(ii) of the Act (42 U.S.C. 2296a(b)(2)(E)(ii)) authorizes the Department to provide reimbursement of those costs on a prorated basis to the extent funds are available.

Section 765.32 outlines the procedures that would govern any additional reimbursement.

IV. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

V. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Regulatory Flexibility Act requires that a regulatory flexibility analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." This rule involves reimbursement for costs of remedial action at active uranium and thorium processing sites. The number of potentially eligible applicants is very limited. Because this rule provides for reimbursement of funds authorized by Title X, it does not pose any adverse effect on the private sector economy or small entities, and in fact may provide a benefit to small entities located near active processing sites. The Department, therefore, certifies that this rule will not have a significant impact on a substantial number of small entities.

VI. Review Under the Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 1910–1400.

VII. Review Under the National Environmental Policy Act

This rule establishes procedures for the reimbursement of eligible remedial action costs incurred by licensees at

active uranium or thorium processing sites. Implementation of this rule will result in cost reimbursement payments to eligible licensees, but will not affect the legally required cleanup of the sites or result in any other environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A6. of Appendix A to subpart D, 10 CFR part 1021, which applies to the establishment of procedural rulemakings such as procedures for the review and approval of applications for grants and cooperative agreements. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

VIII. Review Under Executive Order 12612

This rule does not have a substantial direct effect on the States, the relationship between the States and the Federal Government, or the distribution of power and responsibilities among various levels of government. Therefore, no federalism assessment under Executive Order 12612 is required.

IX. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs agencies to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the rule clearly specifies any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings available prior to judicial review; any provisions for the exhaustion of administrative proceedings; and defines key terms. The Department certifies that today's rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

List of Subjects in 10 CFR Part 765

Radioactive materials, Reclamation, Reporting and recordkeeping requirements, Uranium.

Issued in Washington, DC, on this 10th day of May 1994.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

For the reasons set out in the Preamble, Chapter III of Title 10 of the Code of Federal Regulations is amended by adding a new part 765 to read as follows:

PART 765—REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES

Subpart A—General

Sec.
765.1 Purpose.
765.2 Scope and applicability.
765.3 Definitions.

Subpart B—Reimbursement Criteria

765.10 Eligibility for reimbursement.
765.11 Reimbursable costs.
765.12 Inflation index adjustment procedures.

Subpart C—Procedures for Submitting and Processing Reimbursement Requests

765.20 Procedures for submitting reimbursement claims.
765.21 Procedures for processing reimbursement claims.
765.22 Appeals procedures.
765.23 Annual report.

Subpart D—Additional Reimbursement Procedures

765.30 Reimbursement of costs incurred in accordance with a plan for subsequent remedial action.
765.31 Designation of funds available for subsequent remedial action.
765.32 Reimbursement of excess funds.

Authority: Sections 1001–1004 of Pub. L. No. 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Subpart A—General

765.1 Purpose.

The provisions of this Part establish regulatory requirements governing reimbursement for certain costs of remedial action at active uranium or thorium processing sites as specified by Subtitle A of Title X of the Energy Policy Act of 1992. These regulations are authorized by section 1002 of the Act (42 U.S.C. 2296a–1), which requires the Secretary to issue regulations governing the reimbursements.

765.2 Scope and applicability.

(a) This Part establishes policies, criteria, and procedures governing reimbursement of certain costs of remedial action incurred by licensees at active uranium or thorium processing sites as a result of byproduct material generated as an incident of sales to the United States.

(b) Costs of remedial action at active uranium or thorium processing sites are borne by persons licensed under section 62 or 81 of the Atomic Energy Act (42 U.S.C. 2092, 2111), either by NRC or an Agreement State pursuant to a counterpart to section 62 or 81 of the Atomic Energy Act, under State law, subject to the exceptions and limitations specified in this Part.

(c) The Department shall, subject to the provisions specified in this part, reimburse a licensee, of an active uranium or thorium processing site for the portion of the costs of remedial action as are determined by the Department to be attributable to byproduct material generated as an incident of sales to the United States and either incurred by the licensee not later than December 31, 2002, or incurred by the licensee in accordance with a plan for subsequent remedial action approved by the Department.

(d) Costs of remedial action are reimbursable under Title X for decontamination, decommissioning, reclamation, and other remedial action, provided that claims for reimbursement are supported by reasonable documentation as specified in Subpart C of this Part.

(e) Except as authorized by § 765.32, the total amount of reimbursement paid to any licensee of an active uranium processing site shall not exceed $5.50 multiplied by the number of Federal-related dry short tons of byproduct material. This total amount shall be adjusted for inflation pursuant to section 765.12.

(f) The total amount of reimbursement paid to all active uranium processing site licensees shall not exceed $270 million. This total amount shall be adjusted for inflation by applying the CPI–U, as provided by § 765.12.

(g) The total amount of reimbursement paid to the licensee of the active thorium processing site shall not exceed $40 million, as adjusted for inflation by applying the CPI–U as provided by § 765.12.

(h) Reimbursement of licensees for costs of remedial action will only be made for costs that are supported by reasonable documentation as required by § 765.20 and claimed for reimbursement by a licensee in accordance with the procedures established by Subpart C of this Part.

(i) The $310 million aggregate amount authorized to be appropriated under section 1003(a) of the Act (42 U.S.C. 2296a-2(a)) shall be adjusted for inflation by applying the CPI–U as provided by § 765.12, and shall be provided from the Fund.

§ 765.3 Definitions.

For the purposes of this Part, the following terms are defined as follows:

Active uranium or thorium processing site or *active processing site* means:

(1) any uranium or thorium processing site, including the mill, containing byproduct material for which a license, issued either by NRC or by an Agreement State, for the production at a site of any uranium or thorium derived from ore—

(i) was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978; or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and

(2) any other real property or improvement on such real property that is determined by the Secretary or by an Agreement State to be:

(i) in the vicinity of such site; and

(ii) contaminated with residual byproduct material.

Agreement State means a State that is or has been a party to a discontinuance agreement with NRC under section 274 of the Atomic Energy Act (42 U.S.C. 2021) and thereafter issues licenses and establishes remedial action requirements pursuant to a counterpart to section 62 or 81 of the Atomic Energy Act under state law.

Atomic Energy Act means the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011 *et seq.*).

Byproduct material means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Claim for reimbursement means the submission of an application for reimbursement in accordance with the requirements established in Subpart C of this Part.

Costs of remedial action means costs incurred by a licensee prior to or after enactment of UMTRCA to perform decontamination, decommissioning, reclamation, and other remedial action. These costs may include but are not necessarily limited to expenditures for work necessary to comply with applicable requirements to conduct groundwater remediation, treatment or containment of contaminated soil, disposal of process wastes, removal actions, air pollution abatement measures, mill and equipment decommissioning, site monitoring, administrative activities, expenditures required to meet necessary regulatory standards, or other requirements established by NRC, or an Agreement State. Costs of remedial action must be supported by reasonable documentation in accordance with the requirements of Subpart C of this Part.

Decontamination, decommissioning, reclamation, and other remedial action means work performed which is necessary to comply with all applicable requirements of UMTRCA or, where appropriate, with applicable requirements established by an Agreement State.

Department means the United States Department of Energy or its authorized agents.

Dry short tons of byproduct material means the quantity of tailings generated from the extraction and processing of 2,000 pounds of uranium or thorium ore-bearing rock.

Federal reimbursement ratio means the ratio of Federal-related dry short tons of byproduct material to total dry short tons of byproduct material present at an active uranium or thorium processing site on October 24, 1992. The ratio shall be established by comparing Federal-related dry short tons of byproduct material to total dry short tons of byproduct material present at the site on October 24, 1992, or by another means of attributing costs of remedial action to byproduct material generated as an incident of sales to the United States which the Department determines is more accurate than a ratio established using dry short tons of byproduct material.

Federal-related dry short tons of byproduct material means dry short tons of byproduct material that was present at an active uranium or thorium processing site on October 24, 1992, and was generated as an incident of uranium or thorium sales to the United States.

Generally accepted accounting principles means those principles established by the Financial Accounting Standards Board which encompass the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time.

Inflation index means the consumer price index for all urban consumers (CPI–U) as published by the Department of Commerce's Bureau of Labor Statistics.

Licensee means a site owner licensed under section 62 or 81 of the Atomic Energy Act (42 U.S.C. 2092, 2111) by NRC, or an Agreement State, for any activity at an active uranium or thorium processing site which results, or has resulted, in the production of byproduct material.

Maximum reimbursement amount or maximum reimbursement ceiling means the smaller of the following two quantities:

(1) The amount obtained by multiplying the total cost of remedial action at the site, as determined in the approved plan for subsequent remedial action, by the Federal reimbursement ratio established for the site; or

(2) $5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material.

NRC means the United States Nuclear Regulatory Commission or its predecessor agency.

Offsite disposal means the disposal, and activities that contribute to the disposal, of byproduct material in a location that is not contiguous to the West Chicago Thorium Mill Site located in West Chicago, Illinois, in accordance with a plan approved by, or other written authorization from, the State of Illinois or NRC provided the activities are consistent with the ultimate removal of byproduct material from the West Chicago Thorium Mill Site.

Plan for subsequent remedial action means a plan approved by the Department which includes an estimated total cost and schedule for remedial action, and all applicable requirements of remedial action established by NRC or an Agreement State to be performed after December 31, 2002 at an active uranium or thorium processing site.

Reclamation plan or site reclamation plan means a plan, which has been approved by NRC or an Agreement State, for remedial action at an active processing site that establishes the work necessary to comply with applicable requirements of UMTRCA, or where appropriate with requirements established by an Agreement State.

Remedial action means decontamination, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site.

Secretary means the Secretary of Energy or her designees.

Site owner means a person that presently holds, or held in the past, any interest in land, including but not limited to a fee simple absolute, surface or subsurface ownership of mining claims, easements, and a right of access for the purposes of cleanup, or any other legal or equitable interest.

Tailings means the remaining portion of a metal-bearing ore after some or all of the metal, such as uranium, has been extracted.

The Fund means the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act (42 U.S.C. 2297g).

Title X or "the Act" means Subtitle A of Title X of the Energy Policy Act of

1992, Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a–1 *et seq.*).

UMTRCA means the Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901 *et seq.*).

United States means any executive department, commission, or agency, or other establishment in the executive branch of the Federal Government.

Written Authorization means a written statement from either the NRC or an Agreement State that a licensee has performed in the past, or is authorized to perform in the future, a remedial action that is necessary to comply with the requirements of UMTRCA or, where appropriate, the requirements of an Agreement State.

Subpart B—Reimbursement Criteria

§ 765.10 Eligibility for reimbursement.

(a) Any licensee of an active uranium or thorium processing site that has incurred costs of remedial action for the site that are attributable to byproduct material generated as an incident of sales to the United States shall be eligible for reimbursement of these costs, subject to the procedures and limitations specified in this Part.

(b) Prior to reimbursement of costs of remedial action incurred by a licensee, the Department shall make a determination regarding the total quantity of dry short tons of byproduct material, and the quantity of Federal-related dry short tons of byproduct material present on October 24, 1992 at the licensee's active processing site. A claim for reimbursement from a site for which a determination is made will be evaluated individually. If a licensee does not concur with the Department's determination regarding the quantity of dry short tons of byproduct material present at the site, the licensee may appeal the Department's determination in accordance with § 765.22 of this part. The Department's determination shall be used to determine that portion of an approved claim for reimbursement submitted by the licensee which shall be reimbursed, unless or until the determination is overturned on appeal. If the outcome of an appeal requires a change in the Department's initial determination, the Department will adjust any payment previously made to the licensee to reflect the change.

§ 765.11 Reimbursable costs.

(a) Costs for which a licensee may be reimbursed must be for remedial action that a licensee demonstrates is attributable to byproduct material generated as an incident of sales to the United States, as determined by the Department. These costs are equal to the total costs of remedial action at a site multiplied by the Federal reimbursement ratio established for the site. These costs must be incurred in the performance of activities, prior to or after enactment of UMTRCA, and required by a plan, portion thereof, or other written authorization, approved by NRC or by an Agreement State. Costs of remedial action shall be reimbursable only if approved by the Department in accordance with the provisions of this part.

(b) In addition, costs of remedial action incurred by a licensee after December 31, 2002 must be in accordance with a plan for subsequent remedial action approved by the Department as specified in § 765.30.

(c) Total reimbursement of costs of remedial action incurred at an active processing site that are otherwise reimbursable pursuant to the provisions of this Part shall be limited as follows:

(1) Reimbursement of costs of remedial action to active uranium processing site licensees shall not exceed $5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material.

(2) Aggregate reimbursement of costs of remedial action incurred at all active uranium processing sites shall not exceed $270 million. This aggregate amount shall be adjusted for inflation pursuant to § 765.12; and

(3) Reimbursement of costs of remedial action at the active thorium processing site shall be limited to costs incurred for offsite disposal and shall not exceed $40 million. This amount shall be adjusted for inflation pursuant to § 765.12.

(d) Notwithstanding the Title X requirement that byproduct material must be located at an active processing site on October 24, 1992, byproduct material moved from the Edgemont Mill in Edgemont, South Dakota, to a disposal site as a result of remedial action, shall be eligible for reimbursement in accordance with all applicable requirements of this part.

§ 765.12 Inflation index adjustment procedures.

(a) The amounts of $5.50 (as specified in § 765.2(e) of this rule) $270 million (as specified in § 765.2(f) of this rule), $40 million (as specified in § 765.2(g) of this rule) and $310 million (as specified in § 765.2(i) of this rule) shall be adjusted for inflation as provided by this section.

(b) To make adjustments for inflation to the amounts specified in paragraph (a) of this section, the Department shall apply the CPI–U to these amounts annually, beginning in 1994, using the CPI–U as published by the Bureau of Labor Statistics within the Department of Commerce for the preceding calendar year.

(c) The Department shall adjust annually, using the CPI–U as defined in this Part, amounts paid to an active uranium processing site licensee for purposes of comparison with the $5.50 per dry short ton limit on reimbursement as adjusted for inflation.

Subpart C—Procedures for Submitting and Processing Reimbursement Claims

§ 765.20 Procedures for submitting reimbursement claims.

(a) All costs of remedial action for which reimbursement is claimed must be supported by reasonable documentation as specified in this subpart. The Department reserves the right to deny any claim for reimbursement, in whole or in part, that is not submitted in accordance with the requirements of this subpart.

(b) The licensee shall provide a copy of the approved site reclamation plan or other written authorization from NRC or an Agreement State upon which claims for reimbursement are based, with the initial claim submitted. Any revision or modification made to the plan or other written authorization, which is approved by NRC or an Agreement State, shall be included by the licensee in the next claim submitted to the Department following that revision or modification. This reclamation plan or other written authorization, as modified or revised, shall serve as the basis for the Department's evaluation of all claims for reimbursement submitted by a licensee.

(c) Each submitted claim shall provide a summary of all costs of remedial action for which reimbursement is claimed. This summary shall identify the costs of remedial action associated with each major activity or requirement established by the site's reclamation plan or other written authorization. In addition, each claim shall provide a summary of the documentation relied upon by the licensee in support of each cost category for which reimbursement is claimed.

(d) Documentation used to support a reimbursement claim must demonstrate that the costs of remedial action for which reimbursement is claimed were incurred specifically for activities specified in the site's reclamation plan, or otherwise authorized by NRC or an Agreement State. Summary documentation used in support of a

claim must be cross-referenced to the relevant page and activity of the licensee's reclamation plan, or other written authorization approved by NRC or an Agreement State.

(1) Documentation prepared contemporaneous to the time the cost was incurred should be used when available. The documentation should identify the date or time period for which the cost was incurred, the activity for which the cost was incurred, and the reclamation plan provision or other written authorization to which the cost relates. Where available, each claim should be supported by receipts, invoices, pay records, or other documents that substantiate that each specific cost for which reimbursement is claimed was incurred for work that was necessary to comply with UMTRCA or applicable Agreement State requirements.

(2) Documentation not prepared contemporaneous to the time the cost was incurred, or not directly related to activities specified in the reclamation plan or other written authorization, may be used in support of a claim for reimbursement provided that the licensee determines the documentation is the only means available to document costs for which reimbursement is sought.

(e) The Department may audit, or require the licensee to audit, any documentation used to support a claim on a case-by-case basis and may approve, approve in part, or deny reimbursement of any claim in accordance with the requirements of this part. Documentation relied upon by a licensee in support of a claim for reimbursement shall be made available to the Department and retained by the licensee until 4 years after final payment of a claim is made by the Department.

(f) Each licensee should utilize generally accepted accounting principles consistently throughout the claim. These accounting principles, underlying assumptions, and any other information necessary for the Department to evaluate the claim shall be set forth in each claim.

(g) Following each annual appropriation by Congress, the Department will issue a Federal Register Notice announcing:

(1) A claim submission deadline for that fiscal year;

(2) Availability of funds for reimbursement of costs of remedial action;

(3) Whether the Department anticipates that approved claims for that fiscal year may be subject to prorated payment;

(4) Any changes in the Federal reimbursement ratio or maximum reimbursement ceiling for any active uranium or thorium processing site;

(5) Any revision in the per dry short ton limit on reimbursement for all active uranium processing sites; and

(6) Any other relevant information.

(h) A licensee shall certify, with respect to any claim submitted by it for reimbursement, that the work was completed as described in an approved reclamation plan or other authorization. In addition, the licensee shall certify that all costs for which reimbursement is claimed, all documentation relied upon in support of its costs, and all statements or representations made in the claim are complete, accurate, and true. The certification shall be signed by an officer or other official of the licensee with knowledge of the contents of the claim and authority to represent the licensee in making the certification. Any knowingly false or frivolous statements or representations may subject the individual to penalties under the False Claims Act, sections 3729 through 3731 of title 31 United States Code, or any other applicable statutory authority; and criminal penalties under sections 286, 287, 1001 and 1002 of title 18, United States Code, or any other applicable statutory authority.

(i) All claims for reimbursement submitted to the Department shall be sent by registered or certified mail, return receipt requested. The Department reserves all rights under applicable law to recover any funds paid to licensees which an audit finds to not meet the requirements of this part.

§ 765.21 Procedures for processing reimbursement claims.

(a) The Department will conduct a preliminary review of each claim within 60 days after the claim submission deadline announced in the **Federal Register** Notice specified in § 765.20(g) to determine the completeness of each claim. Payments from the Fund to active uranium or thorium processing site licensees for approved costs of remedial action will be made simultaneously by the Department within 1 year of the claim submission deadline.

(b) After completing the preliminary review specified in paragraph (a) of this section, the Department may audit, or require the licensee to audit, any documentation used in support of such claim, request the licensee to provide additional information, or request the licensee to provide other clarification determined by the Department to be necessary to complete its evaluation of the claim. In addition, the Department reserves the right to conduct an inspection of the site to verify any information provided by the licensee in a claim for reimbursement, or in support thereof. Any information requested by the Department, if provided, must be submitted by the claimant within 60 days of receipt of the request unless the Department specifies in writing that additional time is provided.

(c) At any time during the review of a claim, the Department may request an informal conference with a licensee to obtain further information or clarification on any unresolved issue pertaining to the claim. While the licensee is not required to provide additional clarification requested by the Department, a failure to do so may result in the denial of that portion of the claim for which information is requested.

(d) Based upon the claim submitted and any additional information received by the Department, including any audit or site inspection if conducted, the Department shall complete a final review of all relevant information prior to making a reimbursement decision. When the Department determines it is not clear that an activity for which reimbursement is claimed was necessary to comply with UMTRCA or where appropriate, with applicable Agreement State requirements, the Department may consult with the appropriate regulatory authorities.

(e) A written decision regarding the Department's determination to approve, approve in part, or deny a claim will be provided to the licensee within 10 days of completion of the final review.

(f) If the Department determines that insufficient funds are available at any time to provide for complete payment of all outstanding approved claims, reimbursements of approved claims will be made on a prorated basis. A prorated payment of all outstanding approved claims for reimbursement, or any unpaid portion thereof, shall be made on the basis of the total amount of all outstanding approved claims, regardless of when the claims were submitted or approved.

(g) Notwithstanding the provisions of paragraph (f) of this section, or any other provisions of this part, any requirement for the payment or obligation of funds by the Department established by this part shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

§ 765.22 Appeals procedures.

(a) Any appeal by a licensee of any Department determination subject to the requirements of this part, shall invoke the appeals process specified in paragraph (b) of this section.

(b) A licensee shall file an appeal of any Department determination subject to the requirements of this part with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any appeal must be filed within 45 days from the date the licensee received notice, actual or constructive (i.e., publication in the **Federal Register**), of the Department's determination. Appeals will be governed by, and must comply in full with, the procedures set forth in 10 CFR part 205, subpart H. The decision of the Office of Hearings and Appeals shall be the final decision of the Department. A licensee must file an appeal in order to exhaust its administrative remedies, and the receipt of an appellate decision is a prerequisite to seeking judicial review of any determination made under this part.

§ 765.23 Annual report.

The Department shall prepare annually a report summarizing pertinent information concerning claims submitted in the previous calendar year, the status of the Department's review of the claims, determinations made regarding the claims, amounts paid for claims approved, and other relevant information concerning this reimbursement program. The report will be available to all interested parties upon written request to the Department's Uranium Mill Tailings Remedial Action Project Office, 2155 Louisiana NE., suite 10000, Albuquerque, NM 87110 and will also be available in the Department's Freedom of Information Reading room, 1000 Independence Avenue SW., Washington, DC.

Subpart D—Additional Reimbursement Procedures

§ 765.30 Reimbursement of costs incurred in accordance with a plan for subsequent remedial action.

(a) This section establishes procedures governing reimbursements of costs of remedial action incurred in accordance with a plan for subsequent remedial action approved by the Department as provided in this section. Costs otherwise eligible for reimbursement in accordance with the terms of this part and incurred in accordance with the plan shall be reimbursed in accordance with the provisions of subpart D and subpart C. In the event there is an inconsistency between the requirements of subpart D and subpart C, the provisions of subpart D shall govern reimbursement of such costs of remedial action.

(b) A licensee who anticipates incurring costs of remedial action after December 31, 2002 may submit a plan for subsequent remedial action. This plan may be submitted at any time after January 1, 2000, but no later than December 31, 2001. Reimbursement of costs of remedial action incurred after December 31, 2002 shall be subject to the approval of this plan by the Department. This plan shall describe:

(1) All applicable requirements established by NRC pursuant to UMTRCA, or where appropriate, by the requirements of an Agreement State, included in a reclamation plan approved by NRC or an Agreement State which have not yet been satisfied in full by the licensee, and

(2) The total cost of remedial action required at the site, together with all necessary supporting documentation, segregated into actual costs incurred to date, costs incurred or expected to be incurred prior to December 31, 2002 but not yet approved for reimbursement, and anticipated future costs.

(c) The Department shall review the plan for subsequent remedial action to verify conformance with the NRC- or Agreement State-approved reclamation plan or other written authorization, and to determine the reasonableness of anticipated future costs, and shall approve, approve with suggested modifications, or reject the plan. During its review, the Department may request additional information from the licensee to clarify or provide support for any provision or estimate contained in the plan. The Department may also consult with NRC or an Agreement State concerning any provision or estimate contained in the plan. Upon approval, approval with modifications, or rejection of a plan, the Department shall inform and explain to the licensee its decision.

(d) If the Department rejects a plan for subsequent remedial action submitted by a licensee, the licensee may appeal the Department's rejection or prepare and submit a revised plan. The licensee may continue to submit revised plans for subsequent remedial action until the Department approves a plan, or September 30, 2002, whichever occurs first. A failure by a licensee to receive approval from the Department of a plan prior to December 31, 2002 will preclude that licensee from receiving any reimbursement for costs of remedial action incurred after that date.

(e) The Department shall determine, in approving a plan for subsequent remedial action, the maximum reimbursement amount for which the licensee may be eligible. This maximum reimbursement amount shall be the smaller of the following two quantities:

(1) The amount obtained by multiplying the total cost of remedial action at the site, as determined in the approved plan for subsequent remedial action, by the Federal reimbursement ratio established for such site; or

(2) $5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material. The Department shall subtract from the maximum reimbursement amount any reimbursement already approved to be paid to the licensee. The resulting sum shall be the potential additional reimbursement to which the licensee may be entitled.

§ 765.31 Designation of funds available for subsequent remedial action.

(a) Upon the Department's approval of each plan for subsequent remedial action submitted by a licensee, the Department will designate specific amounts on deposit in the Fund for reimbursement, subject to the availability of appropriated funds as specified in § 765.21(g). If insufficient funds are available at the time of approval of a plan for subsequent remedial action to provide for reimbursement of the total estimated costs, the designation of specific amounts on deposit in the Fund for reimbursement will be made on a prorated basis. Any remaining balance will be designated for reimbursement at the time additional funds become available.

(b) The Department shall authorize reimbursement of costs of remedial action, incurred in accordance with an approved plan for subsequent remedial action and approved by the Department as specified in Subpart C to this Part, to be made from the Fund. These costs are reimbursable until:

(1) This remedial action has been completed, or

(2) The licensee has been reimbursed its maximum reimbursement amount as determined by the Department pursuant to paragraph (e) of § 765.30.

(c) A licensee shall submit any claim for reimbursement of costs of remedial action incurred pursuant to an approved plan for subsequent remedial action in accordance with the requirements of subpart C of this part. The Department shall approve, approve in part, or deny any claims in accordance with the procedures specified in subpart C of this part. The Department shall authorize the

disbursement of funds upon approval of a claim for reimbursement.

(d) After all remedial actions have been completed by affected Agreement State or NRC licensees, the Department will issue a Federal Register notice announcing a termination date beyond which claims for reimbursement will no longer be accepted.

§ 765.32 Reimbursement of excess funds.

(a) No later than July 31, 2005, the Department shall determine if the aggregate amount authorized for appropriation pursuant to section 1003 of the Act (42 U.S.C. 2296a–2), as adjusted for inflation pursuant to § 765.12, exceed as of that date the combined total of all reimbursements which have been paid to licensees under this part, any amounts approved for reimbursement and owed to any licensee, and any anticipated additional reimbursements to be made in accordance with approved plans for subsequent remedial action.

(b) If the Department determines that the amount authorized pursuant to section 1003 of the Act (42 U.S.C. 2296a–2), as adjusted for inflation, exceed the combined total of all reimbursements (as indicated in paragraph (a) of this section), the Department may establish procedures for providing additional reimbursement to uranium licensees for costs of remedial action, subject to the availability of appropriated funds. If the amount of available excess funds is insufficient to provide reimbursement of all eligible costs of remedial action, then reimbursement shall be paid on a prorated basis.

(c) Each eligible uranium licensee's prorated share will be determined by dividing the total excess funds available by the total number of Federal-related dry short tons of byproduct material present at the site where costs of remedial action exceed $5.50 per dry short ton, as adjusted for inflation pursuant to § 765.12. The resulting number will be the maximum cost per dry short ton, over $5.50, that may be reimbursed. Total reimbursement for each licensee that has incurred approved costs of remedial action in excess of $5.50 per dry short ton will be the product of the excess cost per dry short ton multiplied by the number of Federal-related dry short tons of byproduct material at the site or the actual costs incurred and approved by the Department, whichever is less.

(d) Any costs of remedial action for which reimbursement is sought from excess funds determined by the Department to be available is subject to all requirements of this part except the per dry short ton limit on reimbursement established by paragraph (d) of § 765.11.

[FR Doc. 94–12132 Filed 5–20–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursements in fiscal year 1994.

SUMMARY: This Notice announces the Department of Energy's acceptance of initial claims and the availability of approximately $40.6 million in funds in fiscal year 1994 for reimbursements of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. The Department of Energy anticipates that claims submitted by licensees in fiscal year 1994 will substantially exceed $40.6 million and would therefore be subject to prorated payment.

DATES: The closing date for the submission of claims for reimbursement in fiscal year 1994 is July 7, 1994.

ADDRESSES: Claims may be mailed to the Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 2155 Louisiana NE., suite 10000, Albuquerque, NM 87110. All claims should be addressed to the attention of Steven Hamp and sent by registered or certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: Steven Hamp, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, (505) 845–4628.

SUPPLEMENTARY INFORMATION: The Department of Energy is issuing a final rule under 10 CFR Part 765 published elsewhere in this issue to implement the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Public Law 102–486, 42 U.S.C. 2296 *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires the Department of Energy to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 or, where appropriate, with requirements established by a state pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement of costs of remedial action must be supported by reasonable documentation as determined by the Department of Energy in accordance with 10 CFR part 765. Section 1001(b)(2) of the Act limits the amount of reimbursement to any one licensee of an active uranium mill tailings site to an amount not to exceed $5.50, as adjusted for inflation, multiplied by the number of dry short tons of byproduct material located at the site on October 24, 1992, and generated as an incident of sales to the United States. Total reimbursement, in the aggregate, for work performed at the active uranium sites shall not exceed $270 million, as adjusted for inflation. Total reimbursement for work performed at the active thorium processing site shall not exceed $40 million, as adjusted for inflation, and is limited to costs incurred for offsite disposal.

Funds for the reimbursements will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Pub. L. No. 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*)

Issued in Washington, DC, on this 10th day of May, 1994.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

[FR Doc. 94–12133 Filed 5–20–94; 8:45 am]

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LIST OF PUBLIC LAWS

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S. 2000/P.L. 103–252

Human Services Amendments of 1994 (May 18, 1994; 108 Stat. 623; 51 pages)

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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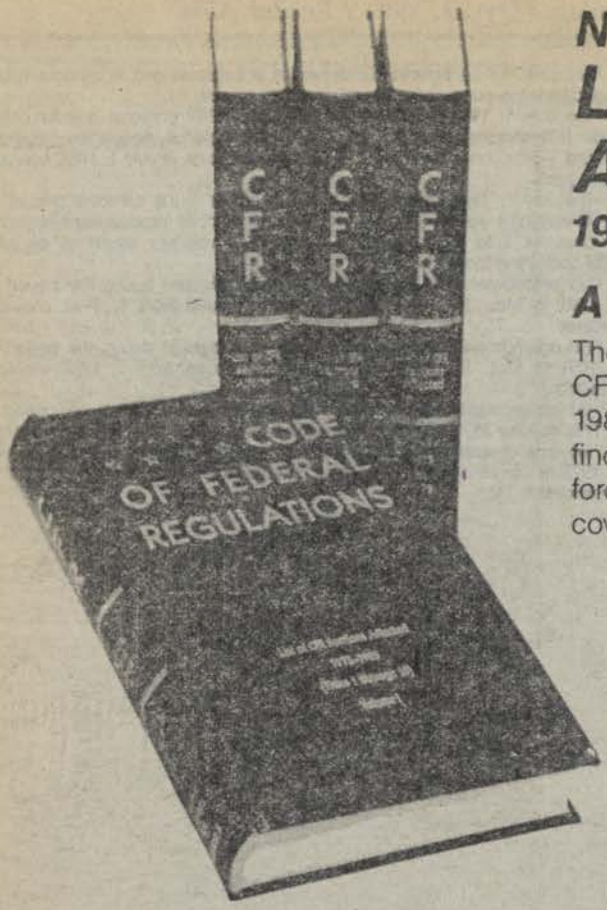

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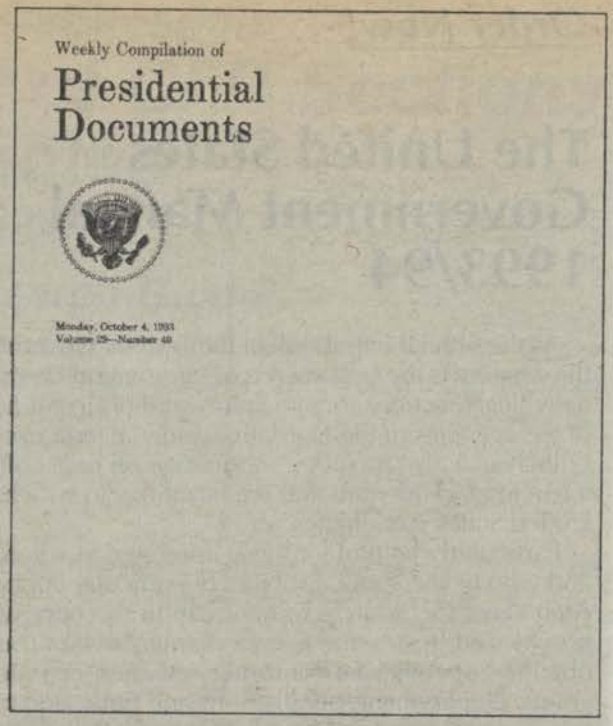

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